

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION, CINCINNATI

EVERETT W. WHISMAN, et al., :  
Plaintiffs :  
-v- : Case No. C-1-02-406  
: (Judge Beckwith)  
: (Magistrate Sherman)  
ZF BATAVIA, LLC, et al., :  
Defendants :

- 0 -

The deposition of **HERBERT HUEBNER**, taken before Susan K. Lee, CVR-CM, Court Reporter and Notary Public in and for the State of Ohio, at the Holiday Inn Eastgate, 4501 Eastgate Boulevard, Cincinnati, Ohio, on the 2nd day of October, 2003, beginning at the hour of 10:52 a.m. and ending at 2:27 p.m. of the same date.

- 0 -

**RIVERSIDE REPORTING**  
**Certified Court Reporters**  
**P.O. Box 949**  
**Covington, Kentucky 41012**  
**KY(859)291-6110 OH(513)574-7017**

APPEARANCES:

FOR THE PLAINTIFFS:       STEPHEN A. SIMON, Esq.  
Attorney at Law  
22 West Ninth Street  
Cincinnati, Ohio 45202

FOR THE DEFENDANTS:       JOHN J. HUNTER, JR., Esq.  
Attorney at Law  
One Canton Square  
1700 Canton Avenue  
Toledo, Ohio 43264

JEFFREY L. VANWAY, Esq.  
Attorney at Law  
312 Walnut Street  
Suite 3200  
Cincinnati, Ohio 45202-4074

ALSO PRESENT:               MR. EVERETT W. WHISMAN

- 0 -

STIPULATIONS:

It is stipulated by and between counsel for the respective parties that the deposition of **HERBERT HUEBNER**, a witness herein, may be taken at this time pursuant to the Federal Rules of Civil Procedure and Notice; that the deposition may be taken via Stenomask by the Notary Public/Court Reporter, and transcribed by her out of the presence of witness; that the deposition was submitted to counsel for the witness for reading and signature.

- 0 -

**INDEX OF EXAMINATION:**

By Mr. Simon.....4

**INDEX OF EXHIBITS:**

136	1/10/03 memo regarding personal/sick days.....	9
137	1999 merit planning and AIP documents.....	31
138	e-mails, 8/27/01 and 8/28/01 with notice attached.....	50
139	e-mails, 1/22/02 and 2/01/02.....	66
140	annual incentive plan objective measurement and weighted average distribution chart, 2001 results.....	68
141	AIP calculation for 2000.....	82
142	AIP calculation for 2001.....	82
143	2001 final AIP objective measurement chart...	98

1       **HERBERT HUEBNER**, called as a witness, being first duly  
2 sworn, testified as follows:

3                   MR. SIMON: I hesitate to say this, Mr.  
4 Huebner. I am Steve Simon. We've been sitting  
5 in the same room many times over in the past  
6 several months in depositions and you've  
7 certainly heard the same speech by me and Mr.  
8 Hunter and Mr. VanWay as well about what the  
9 process of a deposition is, right?

10                  THE WITNESS: Yes.

11                  MR. SIMON: And you fully understand  
12 it?

13                  THE WITNESS: Yes.

14                  MR. SIMON: All right. Then you will  
15 not get that speech.

16 BY MR. SIMON:

17                  Q       What is your current title, sir?

18                  A       I'm the manager of benefits,  
19 compensation and salaried relations at ZF Batavia.

20                  Q       And how long have you held that  
21 position?

22                  A       Since I think it was December of 2001  
23 that I added the salaried relations part. I was hired  
24 as the manager of benefits and compensation and then my  
25 job was modified to include the employee relations work

1 related to salaried employees at a later date.

2 Q When were you first hired?

3 A August 1st of 2000.

4 Q Where had you worked before that?

5 A Immediately before that I worked for  
6 Deaconess Association in Cincinnati, Ohio. It's a  
7 health care company.

8 Q How long did you work for them?

9 A I worked with them for several years.  
10 It was -- I believe it was May of '97 until August of  
11 2000.

12 Q How long have you been experienced in  
13 the HR position?

14 A I began working in HR when I finished  
15 my master's degree and that was August of 1973.

16 Q So you're in your 30th year?

17 A Yeah.

18 Q Are you part of ZF Batavia's policy  
19 committee?

20 A Yes.

21 Q Let me read off a list of people and  
22 you tell me if they're still on the committee. Mr.  
23 Sennish?

24 A Yes.

25 Q Mr. Kehr?

1 A Yes.

2 Q Mr. Newark?

3 A No.

4 Q Mr. Greiner?

5 A Yes.

6 Q That's Mark Greiner?

7 A That's correct.

8 Q Ann Appleton?

9 A Yes.

10 Q Anybody else?

11 A Dr. Ludger Reckmann.

12 Q All right. Did Lou Reckmann take Dick

13 Newark's spot?

14 A Yes.

15 Q Mr. Newark was on the policy committee

16 for a period of time?

17 A That's correct.

18 Q And when did he serve?

19 A Well, you know, I believe he was on the

20 policy committee when -- when I got there and then that

21 switch occurred shortly after Lou got there, right

22 almost simultaneously when Lou got there that we put

23 Lou in and that was January of 2001. Wait a minute.

24 2002 approximately, yeah.

25 Q Let's go back to the exhibits. Do you

1 have Exhibit 30?

2 A Okay.

3 Q Exhibit 30 is an e-mail from you to an  
4 employee named Joe Phelps?

5 A Mm-hmm.

6 Q Do you see in there where you tell Joe  
7 who is on the policy committee?

8 A Yeah.

9 Q Was that information accurate?

10 A Yeah.

11 Q All right. So --

12 A Yeah. And --

13 Q I'm just trying to determine when Mr.  
14 Reckmann joined the --

15 A Well, it was very -- you know, it was  
16 in that time frame. I don't remember exactly when Lou  
17 started attending meetings, but it was right in that  
18 time frame.

19 Q Sometime after February 19th?

20 A Yeah.

21 Q Maybe within a couple months or  
22 something --

23 A Yeah.

24 Q -- Dick Newark left the committee and  
25 Reckmann joined it?

1 A Right. Right.

2 Q What does the policy committee --  
3 what's their task? What's their purpose?

4 A Well, the company is a new company and  
5 so it's to develop and maintain the policies for  
6 salaried employees. I think there's some talk about  
7 possibly, you know, involving other types of policies  
8 as well, but the main focus has been policies related  
9 to human resources for salaried employees.

10 Q Let's see. There was a change  
11 regarding your sick/personal leave policy for salaried  
12 employees a year or so ago, right?

13 A Yes.

14 Q And from what I understand, the policy  
15 had been that salaried employees were entitled to five  
16 days for sick or personal leave, that was changed to  
17 three days for a period in 2002, and then recently, I  
18 think, in January of this year it went back to five  
19 days.

20 A That's correct.

21 Q And what was the basis for the change  
22 initially and the return to five days this year?

23 A Well, in the period of time when the  
24 policy went from five to three there was concern that  
25 people were using sick time, personal time for reasons



1 other than what was intended by the policy. In  
2 addition, it was a time when, you know, we're in a new  
3 product launch, the existing product had a very -- was  
4 put into a very popular model, so there was a lot of  
5 demand. There was really a need to have people on  
6 board as much as possible, so people felt that they  
7 should reduce the number of sick and personal time,  
8 sick/personal days.

9 Q Why did it return back to five then?

10 A Well, I think people felt that, you  
11 know, there was some unhappiness among employees, that  
12 there were some instances where -- that had been  
13 brought to various people's attention that there was  
14 some reasonable need for it, so it was decided to be  
15 reinstated back to five.

16 Q I'll hand you a document that we'll  
17 mark as Exhibit 136. Take as long as you need to  
18 review this, Mr. Huebner. I know you've seen it  
19 before. This is a memo of January 10th, 2003 from you  
20 to salaried employees explaining that the sick and  
21 personal leave policy is changing back to five days,  
22 right?

23 A Right.

24 Q And you agree with me that in between  
25 the time when the change first happened back to three

1 days to the time where you sent this memo a lawsuit was  
2 filed in June of last year?

3 A That's correct.

4 Q Any connection?

5 A I guess to the extent that it -- it's  
6 one measure of employee dissatisfaction. You know, I  
7 think that I had some employees come to me and other  
8 directors or managers had people come to them and  
9 express concerns about it and so it was decided to  
10 bring it -- bring it back to five.

11 Q When you made the change in last year,  
12 2002, in sick and personal leave to three days, there  
13 were instantaneous complaints, right?

14 A There were some, yeah. Yes.

15 Q From quite a few people, to be fair?

16 A Well, you know, that's kind of a  
17 subjective thing. I had myself, there were only about  
18 two or three people that came to me, but on the other  
19 hand there were some people that expressed concern to  
20 other -- you know, other managers.

21 Q Len Sennish had told you that other  
22 people had come to him about it?

23 A I don't recall that he said something,  
24 but I wouldn't be surprised.

25 Q Do people come to Len Sennish with

1 problems they have about their employment?

2 A From time to time. Len is a person who  
3 goes out on the floor quite a bit or had been and so he  
4 -- you know, he runs into a lot of people during the  
5 day and so people talk to him.

6 Q Do you see him as a hands-on HR  
7 director?

8 A He's very active in the business, yeah.  
9 Yes.

10 Q I mean, he knows what's going on on the  
11 plant floor generally?

12 A Yes.

13 Q Is it your understanding that there was  
14 a period of weekends in April and May of 2002 that a  
15 group of salaried maintenance employees worked weekends  
16 and were not paid overtime for that work?

17 A Yes.

18 Q And were you aware of that at the time,  
19 in April/May of 2002?

20 A I -- you know, I'm fuzzy about maybe  
21 the timing exactly, but, you know, I was very aware  
22 that there was -- that people were exceeding the  
23 overtime budget, you know, the various departments, and  
24 that that was something that -- that was decided upon  
25 that -- that if people exceeded their overtime budget,

1       that they were going to have to, you know, stay within  
2       their budget, which meant either, you know, not paying  
3       people for overtime or else working less overtime, one  
4       or the other. But the managers were supposed to adhere  
5       to that.

6               Q       All right. And I'm not going to go  
7       through anything close to all the documents we've  
8       already made as exhibits, Mr. Huebner, but I think  
9       there's already an exhibit that a memo was sent out by  
10      Mr. Sennish in the spring of 2002 that explained this  
11      problem with the overtime budget; that sounds right?

12             A       Yes.

13             Q       It's your understanding back then that  
14      that's going to be handled one of two ways, either  
15      people will work less overtime, right?

16             A       Mm-hmm.

17             Q       That's a yes?

18             A       Yes. I'm sorry.

19             Q       Or the other possibility is that people  
20      are going to have to work overtime and not get paid?

21             A       Yes.

22             Q       So it certainly wouldn't be a surprise  
23      to you if a group of people in maintenance during that  
24      same period worked overtime and were not paid?

25             A       Yes.

1 Q Did anyone tell you that at the time?

2 A I -- I remember one -- one specific  
3 instance and certainly I'm -- you know, I'm generally  
4 aware that that happened. I remember we had one  
5 individual at the time who was working in maintenance  
6 who was unhappy working with the -- with the  
7 organization and, you know, as I recall, he quit and he  
8 mentioned to me that he was -- you know, one of the  
9 things he was unhappy with was the fact that he didn't  
10 get paid for certain -- certain overtime.

11 Q Who was that?

12 A You know, I really don't remember his  
13 name, but, you know, it was a guy who quit about that  
14 time.

15 Q You were here when Mr. Sennish  
16 testified in this case?

17 A Mm-hmm.

18 Q Do you recall Mr. Sennish's deposition  
19 testimony that he was not aware that there were people  
20 in maintenance who worked overtime without being paid?  
21 Do you recall that testimony?

22 A I don't recall it exactly, but --

23 Q Well, if I represent to you that's what  
24 he testified, would that be a surprise to you that Mr.  
25 Sennish wouldn't have been aware of the fact that

1 maintenance people were working overtime and not being  
2 paid?

3 A It's certainly possible that he wasn't  
4 aware that that happened, and I -- I would characterize  
5 that by saying that the fact that people were told to  
6 manage the -- the overtime was, you know, clear to him  
7 and everybody. On the other hand, is he going to know  
8 exactly what people are doing in all facets of  
9 manufacturing all of the time? You know, the answer is  
10 no, he's not necessarily going to know that precisely.  
11 So, you know, I can't say whether he did or didn't know  
12 it at the time.

13 Q You didn't tell Mr. Sennish about this  
14 one maintenance employee whose name you can't remember  
15 that had come to you that had said "I worked a period  
16 of time and didn't get paid overtime"? You didn't  
17 report that to Mr. Sennish?

18 A I don't remember whether I did or not.  
19 We may have discussed it because it seems to me this  
20 guy, when he was leaving, said "Well, gee, am I going  
21 to get, you know, paid that overtime?" And my response  
22 to him was "Well, no. Nobody has been paid for that  
23 overtime and so, no, we're not going to pay you."

24 Q You were aware that there were other  
25 people in addition to him that were not being paid for

1 overtime?

2 A Yeah.

3 Q In maintenance?

4 A Yeah.

5 Q In other areas of the plant, too?

6 A That's -- that was my general  
7 awareness, that it was maintenance that was  
8 overshooting the budget.

9 Now, there was also -- subsequent to  
10 that I was aware that the material folks, the planning  
11 people were close to the budget, but I don't know if  
12 anybody ever didn't get paid for overtime or not. I  
13 wasn't aware of that.

14 Q You can tell me if I'm wrong. It  
15 sounds like you didn't tell Mr. Sennish about the group  
16 of maintenance employees who didn't get paid overtime  
17 because you figured it wasn't really newsworthy?

18 A Well, I guess I'm not aware of the time  
19 and, you know, when it was and I don't know that we --  
20 we're not directly -- whether someone gets paid  
21 overtime or doesn't get overtime isn't a matter of  
22 daily record to us. I mean, we're doing our thing and  
23 the time sheets come in, they're managed by the  
24 managers and they get run through payroll and then  
25 they're paid, so that there's likely to be some delay

1 in terms of, you know, cause and effect there. And it  
2 was likely to be coming -- come up on an exceptional  
3 basis.

4 Q Now, there's periods of time other than  
5 this period of time we're talking about in 2002 where  
6 somebody might not be paid overtime even though they  
7 put it down because the supervisor decided that wasn't  
8 authorized?

9 A That's correct.

10 Q That sort of thing happens often  
11 enough, right?

12 A I mean, managers have to manage and,  
13 you know, if -- if they make that decision, they make  
14 that decision. And I don't know how often that  
15 happens, but I'm sure it happens.

16 Q But that kind of situation was  
17 different than what you had heard in the spring of  
18 2002, fair? And the distinction being, Mr. Huebner,  
19 that you understood in the spring of 2002 that people  
20 were working authorized overtime that they were  
21 required to work and they weren't going to get paid  
22 because there wasn't money in the budget; that was your  
23 understanding at the time?

24 MR. HUNTER: Objection. Compound  
25 question. But you can answer, Herb.



1                   THE WITNESS: Well, let's put it this  
2                   way: I mean, I don't know that I think quite  
3                   that compartmentally. I mean, people are here  
4                   to manage the business and they're looking at  
5                   okay, well, was this an appropriate overtime  
6                   situation to whether it would be paid or not  
7                   or, you know, is it -- is it authorized in  
8                   terms of okay, do we have a budget for it. And  
9                   this was the case where the -- the budget  
10                  wasn't there.

11               BY MR. SIMON:

12                  Q           If you were told today that "By the  
13                  way, Mr. Huebner, we had about ten maintenance  
14                  employees, salaried, in here over the weekend and we're  
15                  not paying any of them because we're not going to," I  
16                  mean, would that be unusual?

17                  A           Well, yeah. I'd ask, you know, why is  
18                  that and what are the circumstances, sure.

19                  Q           I'm just trying to understand. From  
20                  your perspective in spring of 2002 finding out that a  
21                  group of people hadn't been paid overtime wasn't  
22                  surprising to you because you knew that there was a  
23                  lack of money in the budget, right?

24                  A           Yeah.

25                  Q           And from your working with Mr. Sennish,

1       you assumed that he also had that understanding?

2               A           I -- I guess I would have, you know,  
3       assumed that, you know, he would have become aware  
4       because of his regular interaction with people, but,  
5       you know, whether he did or he didn't, you know, I  
6       don't know.

7               Q           We'll nail this down and move on. When  
8       you found out that a group of maintenance employees  
9       weren't paid overtime, it wasn't a surprise to you  
10      because you knew of the problems in budget, right?

11              A           Yes.

12              Q           And it's fair to say Mr. Sennish, if he  
13      had found out a group of maintenance employees weren't  
14      being paid authorized overtime in that period, he also  
15      wouldn't have been surprised?

16              A           I wouldn't think so.

17              Q           Is the current policy at ZF Batavia to  
18      pay let's take salaried group leaders overtime where  
19      that work is authorized?

20              A           Yes.

21              Q           All right. And so as you sit here  
22      today, you're aware that of the people that didn't get  
23      paid in 2002, those included people like Wayne Whisman,  
24      group leaders, right?

25              A           Yes.

1                   Q           And you're aware that the work that Mr.  
2           Whisman and others did in the maintenance department,  
3           that that overtime they worked was authorized?

4                   A           Well, it was -- they were -- well,  
5           first of all, I mean, I'm not exactly aware of the  
6           precise circumstances, okay, that they were supposed to  
7           be fixing this machine or whatever it might be. I  
8           mean, you know, I never got into the detail of that.  
9           But it was -- and actually I don't know that I'm aware  
10          of how it was communicated to them that there -- you  
11          know, that there was a budgetary issue with respect to  
12          the overtime. And as I recall, there was some mention  
13          to people that there -- there would not be overtime  
14          paid if they exceeded the budget. I mean, you know, as  
15          I recall now. And so it -- it seems to me that it  
16          wasn't authorized in the sense of we're not going to  
17          pay you overtime because we don't have the money. On  
18          the other hand, there was an expectation that people  
19          would be working.

20                  Q           Well, when I say authorized, they  
21          weren't coming in on the weekends just for the heck of  
22          it. They came in on the weekends because, as you  
23          understand, their supervisors told them to?

24                  A           There was work to do, yes.

25                  Q           And the general policy is when you come

1 in because there's work to do, their supervisor says  
2 you have to come in on the weekend, that salaried  
3 people get paid overtime, right?

4 A Well, I mean, there's an authorization  
5 process. People are supposed to plan out the overtime  
6 in advance and then -- and then a supervisor approves  
7 it based upon what was -- what was approved. And so --

8 Q As far as you know -- I don't mean to  
9 interrupt you, but as far as you knew, that process was  
10 followed with respect to Mr. Whisman and others in  
11 spring of 2002?

12 A I guess. I don't know. Where we are  
13 today, I don't know exactly what happened.

14 Q Do you have any facts to believe that  
15 that process regarding authorization wasn't followed?  
16 Do you have any facts?

17 A There's a double negative in there.  
18 Let me just think that through.

19 Q I'll re-ask the question. Do you have  
20 any reason to believe that the overtime authorization  
21 process wasn't followed in this period of spring of  
22 2002 that we've been discussing?

23 A My recollection by looking at the  
24 records was is that there were some -- there was  
25 records related to that, you know, in the file so, you

1 know, I'm assuming that there were discussions relating  
2 to what was and wasn't authorized and what was and  
3 wasn't going to be paid.

4 Q But as far as you know, the work itself  
5 was authorized, correct, Mr. Huebner?

6 A Well, we keep on talking about the word  
7 authorized and I think the -- was the work there  
8 necessary to be done? Yes. Was the pay of overtime  
9 then that was concomitant -- you know, that related to  
10 that, was that approved? And my understanding is is  
11 that they told people ahead of time that they didn't  
12 have -- they didn't have the money to pay the overtime.  
13 I don't think it was done after the fact.

14 Q So the current policy at ZF Batavia is  
15 if someone tells Wayne Whisman "You're going to work  
16 this weekend. You're required to work this weekend.  
17 Work needs to be done. But just so you know, we're not  
18 paying you," in your mind that would be consistent with  
19 current policy at ZF Batavia?

20 A Well, managers have to manage and I  
21 think that would be a little bit -- even, you know, the  
22 practices, it would be a little bit out of the ordinary  
23 because basically what people did following this couple  
24 week period was to work so that the budgets and the  
25 authorization -- you know, to get a better

1       synchronization between the work that needed to be done  
2       and the available budget for overtime and, you know,  
3       the management of that.

4                       But there was no question. I mean,  
5       that's the whole thing. This -- this occurred because  
6       people had set up a financial plan, you know, as you do  
7       for anything in a business and that was going awry.

8               Q       I don't know if you answered my  
9       question. So the current policy is at ZF Batavia if  
10      the manager tells a group leader, salaried, "You're  
11      going to work on the weekend and just so you  
12      understand, you're not going to get paid for it," that  
13      would be consistent with the current ZF Batavia policy?

14              A       Because he's explaining that the pay of  
15      it isn't going to be authorized, yeah. But on the  
16      other hand --

17              Q       Do you -- I'm sorry. You were going to  
18      say something else?

19              A       Well, I mean, it's -- and, again, it's  
20      hypothetical situation, you know, that typically --  
21      well, I guess I don't know if this could -- you know, I  
22      think it wouldn't happen too often without us being  
23      aware of it, but, you know, it hasn't happened very  
24      much lately.

25              Q       So it's hypothetical, but this, what

1 I've described, did happen last year, right?

2 A That's correct.

3 Q Do you have Exhibit 2?

4 A You had it right with Kevin. It was in  
5 front of Kevin.

6 MR. HUNTER: Did Kevin take it?

7 THE WITNESS: I don't think so.

8 BY MR. SIMON:

9 Q Well, while Mr. Hunter is looking for  
10 it, Mr. Huebner, Exhibit 2, you couldn't be more  
11 familiar with a document than Exhibit 2; is that fair  
12 to say?

13 A Well, I'm familiar with Exhibit 2.

14 Q I was kidding. We've talked about that  
15 many times --

16 A Yes.

17 Q -- in depositions you've attended. And  
18 for the record, you've sat in on, what, 20 depositions  
19 in this case, right?

20 A Well, there have been quite a few, yes.

21 Q On the second page of Exhibit 2 up in  
22 the upper left do you see where it says authorized  
23 overtime will be paid?

24 A Yes.

25 Q And it's your understanding that this

1 tri-fold brochure that's Exhibit 2, that this was  
2 distributed to Ford transitional employees in 1999,  
3 right?

4 A Yes.

5 Q All right. So where it says authorized  
6 overtime will be paid, is that the current policy at ZF  
7 Batavia?

8 A Yes.

9 Q So how is that consistent with what you  
10 just said? How is that consistent with telling a group  
11 leader that they have to come in on the weekends, work  
12 overtime and not be paid?

13 A Well, in -- in terms of it's  
14 authorized, you know, that's -- that's the word and  
15 it's the interpretation of that. And I think that it's  
16 a situation where I think the reality of it is is that  
17 in general -- now, again, we have the exception in 2002  
18 -- is that people have been able to match up their  
19 available budgetary dollars with the amount of overtime  
20 they assign, but on the other hand, they're supposed to  
21 be doing that matching so that we -- we stay within the  
22 budget.

23 So the -- the process, the way it  
24 should work is that the manager is, you know, sitting  
25 down with the employees and planning out what needs to



1 be done during the pay period and planning out what  
2 overtime is going to be worked and then he's got to  
3 make sure that's consistent with his budget.

4 Q And in your mind the statement  
5 authorized overtime will be paid, that statement is  
6 consistent with a supervisor telling a salaried  
7 employee to come in on the weekend and work overtime  
8 and not be paid; is that right?

9 A Because, again, you know, situations  
10 could occur, and we're talking, you know, in many cases  
11 hypothetically, but, I mean, if the individual doesn't  
12 have the budget and yet the work has got to be done,  
13 with salaried employees I wouldn't -- you know, it's --  
14 it's not inconceivable that a person could be asked to  
15 work and not get paid overtime.

16 Q You didn't quite answer my question yes  
17 or no. Is the statement authorized overtime will be  
18 paid consistent with the practice of having someone  
19 come in and work on the weekend that's required and not  
20 be paid, yes or no?

21 A Yes.

22 Q Is there a reason that the maintenance  
23 employees haven't been paid that overtime that they  
24 worked last year?

25 A Is there a reason that they haven't

1       been paid? Well, they didn't have the budget at the  
2       time, so they didn't pay it.

3               Q       Is there the budget now to pay it?

4               A       I don't know.

5               Q       Have you asked anybody?

6               A       No.

7               Q       There's no question in your mind that  
8       management at ZF Batavia are well aware of the fact  
9       that many of these employees worked this period in 2002  
10      and were not paid overtime, correct? It's not a secret  
11      at this point, is it?

12              A       At this point in time it's not a secret  
13      I don't think. Well, at least, you know, say, you  
14      know, most managers would be aware -- need to be aware  
15      of this, I mean, within the chain of command, let's put  
16      it that way.

17              Q       Everyone on the current policy  
18      committee is aware of this, right?

19              A       I would -- probably. I guess, you  
20      know, let me just think through who they are, you know.  
21      Whether Ann is aware of it or not, you know, I'm not  
22      sure, but I would think all the other ones are.

23              Q       And the people on the policy committee,  
24      some work in human resources, some don't, right?

25              A       That's correct.

1                   Q           All of them that serve on the policy  
2                   committee, they have to have some minimum level of  
3                   knowledge regarding the pay practices, the personnel  
4                   policies at ZF Batavia; is that right?

5                   A           Yes.

6                   Q           So certainly when any one of the  
7                   members of this policy committee are talking about the  
8                   pay practices at ZF Batavia, that's someone who  
9                   certainly has a basic knowledge of the practice?

10                  A           Well, if they don't, they would ask  
11                  questions about it because not everybody's level of  
12                  expertise is the same and, quite honestly, they may not  
13                  be familiar with what's going on in a particular area.  
14                  So some people are more well versed on what's going in  
15                  the administration area, some are more well versed  
16                  what's going on in the factory and stuff. So, you  
17                  know, I mean -- I mean, if a question comes up, we have  
18                  to dig into it.

19                  Q           If someone comes up to you and asks  
20                  about overtime policy, you're a good person to ask,  
21                  right?

22                  A           Yeah.

23                  Q           And if you give an answer, they can --  
24                  and I understand people probably come up to you a lot  
25                  of times where you say "I'm going to have to get back

1 to you and find out."

2 A Sure.

3 Q But those times where you say "Here's  
4 the answer," they certainly can rely on your answer?

5 A Generally speaking.

6 Q And that's true of really anyone who  
7 would be serving on the policy committee, if you go up  
8 to them and say "Ann Appleton, what's the policy  
9 regarding overtime?" she gives an answer, you can  
10 certainly rely on the fact that she's knowledgeable of  
11 what she's talking about?

12 A I would say that, depending on the  
13 depth of the question, there are certain policy  
14 committee members who would probably either defer to  
15 somebody in HR or get back to the person. I don't  
16 think they'd be giving flat answers out. You know,  
17 like Ann, if somebody asked her a personnel question,  
18 my guess is that she would refer them to me.

19 Q But, I mean, if somebody asked Karl  
20 Kehr a question and he gave an answer, one can rely on  
21 the fact that the answer he's giving is accurate, given  
22 that he serves on policy committee certainly?

23 A Yes. But like anybody else, he'd -- it  
24 wouldn't take too long for him probably to need to get  
25 into and re-read the policy or, you know, check out the

1       circumstances or what have you.

2                   Q       Unless his giving an answer didn't  
3       require doing that, right?

4                   A       Yeah. It depends.

5                   Q       I mean, if last year somebody came up  
6       to Dick Newark and said "What's the policy on sick  
7       days? How many do I have?" Mr. Newark obviously could  
8       have said "Well, the policy has been changed. You now  
9       have three days," right?

10                  A       After it had been changed, yeah, he  
11       would have known.

12                  Q       Let's move to AIP. We've heard lots of  
13       testimony about the AIP. Let me give you a general  
14       understanding and you tell me if I'm right. When you  
15       started in 2000, they had already -- the company had  
16       already distributed AIP bonuses for the previous year?

17                  A       That's correct.

18                  Q       Are you knowledgeable about how they  
19       did it?

20                  A       Yes.

21                  Q       And did they do it by assigning a fixed  
22       percentage to people, depending on what salary band  
23       they were and then using that percentage as a part of  
24       their base salary and give them an AIP bonus?

25                  A       Whereas that's a general categorization

1 of how it -- how it worked, the -- I would -- excuse  
2 me. When I started, I was oriented by Tony Deshaw, my  
3 predecessor, and one of the questions I asked Tony was  
4 was there a discretionary component in the AIP and --  
5 or did everybody just get, you know, the straight  
6 percentage that the numerical formula would indicate.  
7 And he -- he told me that the bonus for -- and that  
8 would have -- let me just make sure -- yeah, that would  
9 have been the payment, the AIP payment for '99 that was  
10 paid in 2000, there was a discretionary component that  
11 -- that he provided the formula information to the  
12 managers and they were free to change that and, in  
13 fact, they did.

14 Now, could I say who may or may not  
15 have gotten more or less? I'd have to look at the --  
16 at the facts, but that's what I remember Tony telling  
17 me.

18 Q Before I show you this document, let me  
19 see if this general statement is true. For the 1999  
20 and 2000 bonus which would be distributed in 2000 and  
21 2001 respectively the AIP bonus was not dependent on  
22 individual performance?

23 A No. I just said that the 1999 was not  
24 dependent on individual performance. Was not.

25 Q And 2000?

1                   A           And 2000 was pretty much a straight --  
2           straight payment.

3                   Q           And then the 2001 AIP there was a  
4           change where individual performance was factored in,  
5           correct?

6                   A           That's correct.

7                   Q           And then the 2002 AIP bonus that was  
8           paid this year, that also factored in individual  
9           performance?

10                  A           That's correct.

11                  Q           All right. Let me show you a document  
12           we've marked as Exhibit 137. You might have to share  
13           with Mr. Hunter. Sorry about that. For the record,  
14           Exhibit 137 is marked Bates stamp P00634 through 639.  
15           Take a second to familiarize yourself with it. I'm  
16           just going to ask you a few questions about particular  
17           things, Mr. Huebner.

18                  A           Okay.

19                  Q           Have you ever seen these documents  
20           before?

21                  A           Yes.

22                  Q           Do you know who authored them or where  
23           they came from?

24                  A           It's been a while because I believe  
25           this is the -- the information from the payment of the

1       -- yeah, this is from 2000, payable in 2001. And yeah,  
2       this -- the second bullet would indicate that this is  
3       -- this is a discussion that related to -- or the  
4       overheads related to a discussion relating to the 2000  
5       -- wait a minute, though.

6               MR. HUNTER: Take your time.

7               THE WITNESS: Okay. Yeah. No, that  
8       would have been for the 2001 payout. Now, I'm  
9       sorry, but I'm getting a little bit goofed up.  
10      Let me -- let me just look at it a little bit  
11      more. And the reason why I'm getting goofed up  
12      is that they used some overheads and then we  
13      modified them again the next year and that's  
14      why I'm stumbling a little bit. I'm just  
15      trying to make sure.

16              Okay. Okay. No. This bullet here.  
17      Yeah, this is the one that they used to explain  
18      the 1999 AIP because that talks about the 54  
19      transitional employees would be prorated by  
20      Ford and ZF for payouts.

21              MR. SIMON: All right.

22              THE WITNESS: And to answer your  
23      question, I believe there was a cooperative  
24      effort between Ann Appleton and my predecessor,  
25      Tony Deshaw, to put that together.



1 BY MR. SIMON:

2 Q To put these documents together?

3 A That's correct.

4 Q And I think you started to say they  
5 were used as overheads for a meeting of some type?

6 A Yes.

7 Q For the policy committee to discuss  
8 perhaps?

9 A My understanding was is that it was  
10 broader than that. I think they used it to explain to  
11 line managers.

12 Q And would line managers include group  
13 leaders?

14 A I wasn't there, so I don't know who --  
15 who attended. The following year, I think, we had  
16 people at one level above that, so it would have been  
17 the area managers and, you know, people up higher.

18 Q Turning, if you could, to I think  
19 what's the third or fourth page that's marked 637 in  
20 the corner --

21 A Okay.

22 Q -- this page at the top says 1999 AIP  
23 Award Targets.

24 A Mm-hmm.

25 Q And, again, this is part of Exhibit

1 137. What does the information on that page show?

2 A Well, it shows the percentage that was  
3 going to be paid by broad band. And the broad bands  
4 are the way the employees are organized in terms of  
5 their -- their level of responsibility and their pay  
6 ranges. And so this shows that for the various broad  
7 bands, and if we pick one, GSR is where the bulk of the  
8 salaried employees are, that -- that the Ford  
9 transitionals would receive 6.9 percent and the ZF --  
10 at the time they called them ZF new hires would get 9.5  
11 percent. And so those are the -- the targets for the  
12 -- for the bonuses and the actual payout would depend  
13 on how they -- you know, how it would perform, you  
14 know. So if the company performed at a certain level,  
15 you could get, you know, 50 percent of that or 75 or  
16 100 or whatever the -- but that was the -- the base  
17 targets that were used at the time.

18 Q Do you know if the salaried employees  
19 received -- for example, the GSR Ford transitionals,  
20 did they receive 6.9 percent as a bonus?

21 A I can't say for sure. I mean, I have a  
22 vague recollection that they may have gotten just  
23 slightly -- slightly more of that.

24 And, of course, 1999 was a rather  
25 complex payout year because the employees had worked

1 part of the year for Ford and got from Ford whatever  
2 they got for that time frame, you know, not in AIP but  
3 in the Ford program, and then they got the ZF Batavia  
4 AIP award for that prorated part of that year.

5 And they did something in addition  
6 called a true-up. And whereas I -- you know, without  
7 work in front of me, I can't describe it exactly, but  
8 basically the general concept was is that the process  
9 of assimilating into the ZF Batavia workforce took a  
10 period of time, so it could be that you could have  
11 started as a Ford transition on, say, July 1 of 1999 or  
12 it could have been December 1 of 1999 and that timing  
13 alone, your total payout out of -- let's say the total  
14 income from various types of bonuses for two people  
15 with equal rates of pay might have been different  
16 because if one of them started in July, then their --  
17 their payout would have been different than if they  
18 started in November. And so recognizing that, the  
19 management folks at ZF Batavia on their own decided to  
20 make it kind of a level playing field, as it were, and  
21 I believe that the Ford payout in that year was a  
22 little bit higher than ZF's and so they paid a little  
23 bit more just, you know, to eliminate that timing  
24 variance.

25 Q Just so I understand, where it says on

1       that document Ford/ZF Transitionals, that refers to a  
2       group of people that we've been talking about in this  
3       lawsuit as Ford transitionals; is that correct?

4               A           That's correct.

5               Q           And ZF refers to what we're calling ZF  
6       Batavia new hires?

7               A           Yes.

8               Q           What explanation is there for the  
9       difference of 6.9 percent versus 9.5 percent, looking  
10      at the GSR level?

11              A           Okay. The intent of the way the AIP  
12      was set up was that the cash awards were to be  
13      comparable between the Ford transitionals and the ZFs,  
14      and the -- the broad bands, there's two sets of, you  
15      know, broad bands, one for Ford transitionals, one for  
16      ZF'ers and, of course, then the pay opportunities were  
17      a little bit higher for the ZF transitionals and so in  
18      order to --

19              Q           You said ZF transitional. You're  
20      talking about Ford transitional?

21              A           I'm sorry. I'm seeing this here and  
22      it's throwing me off. Yeah, the Ford transitionals;  
23      you're correct.

24                            So anyway, the -- in order to on a  
25      general basis get a rough equivalent in dollars between

1 the Ford transitionals and the ZF new hires, there was  
2 this difference in the -- in the percentages. Can I  
3 call time briefly?

4 MR. SIMON: Off the record.

5 (OFF THE RECORD)

6 MR. SIMON: Back on the record.

7 BY MR. SIMON:

8 Q I think your testimony is that  
9 generally speaking in 1999 the Ford transitional  
10 employees in GSR generally had a higher base salary  
11 than an equivalent GSR who was a ZF Batavia new hire;  
12 is that right?

13 A That was part of the -- the thought  
14 process at the time and certainly the thinking in terms  
15 of the planning was is that the -- again, going back to  
16 the broad bands, is that the -- the planned target  
17 areas or the range of distribution in which Ford  
18 transitional salaries could fall versus the range of  
19 distribution that the ZF new hires could fall was  
20 different in that the Ford had a higher -- Ford  
21 transitionals had a higher broad band and so that was  
22 the thinking that -- you know, that was used at that  
23 time is to say okay, you know, it's likely that their  
24 pay is going to be higher and so to get -- to get at  
25 that issue of having level dollars, that's how they're

1 going to do it.

2 Q To simplify, was it the thought that  
3 you might have a GSR who's a Ford transitional who,  
4 let's say, makes -- let's say that person makes \$60,000  
5 in base and you have a ZF Batavia new hire who's in an  
6 equivalent position, a GSR, who makes \$50,000. The  
7 reason there's a different percentage is so that the  
8 lump sum AIP will be roughly equal; is that --

9 A Yes, that's the idea.

10 Q Now, it's true, however, that there  
11 were ZF Batavia new hires who made more than some Ford  
12 transitionals in equivalent positions?

13 A Yes.

14 Q That was true in '99. It was also true  
15 in 2000?

16 A You know, I guess I can't call up  
17 anybody to mind, but that certainly -- well, let's put  
18 it this way: It's certainly within the realm of  
19 possibility and it's probable that that was the case,  
20 but I'd have to look at the list to say that for sure.

21 Q You were obviously not in on AIP paid  
22 out in 2000. That's before you joined. So then if we  
23 look forward to the 2000 AIP paid out on 2001, for that  
24 AIP you were intricately involved --

25 A Yes.

1                   Q           -- in the calculation? And you were  
2           aware during that period that there may be, or maybe  
3           you were even aware of certain ones -- you were aware  
4           in 2000 when you were figuring out the calculation for  
5           the AIP to distribute in 2001 that there were Ford  
6           transitional employees who made less base salary than  
7           ZF Batavia new hires in equivalent positions?

8                   A           I guess I didn't -- at the time when I  
9           was working on it I didn't particularly focus on that,  
10          but --

11                  Q           I just want to know if you were aware  
12          of it.

13                  A           You know, it -- it -- well, you know, I  
14          guess in general the transitional employees were --  
15          were paid better. I guess what I'm struggling for is  
16          to come up with names off the top of my head where that  
17          might have been not the case. You know, a lot of the  
18          new hires were shorter service, but there were some --  
19          you know, I'm sure there are new hires that were  
20          brought in that had more -- you know, had a lot of  
21          experience that might have -- might have been -- had  
22          higher pay than certain other -- but, you know,  
23          obviously that's not just a single, you know, criteria,  
24          whether you were a Ford or a ZF new hire. There's the  
25          whole experience, educational, you know, thing. But

1       yeah, it's possible.

2                   Q       I understand you can't come up with  
3       individual names, but when you were working on the 2000  
4       AIP bonus calculation, you were aware that there were  
5       some ZFB new hires that had higher base income than the  
6       corresponding employee who was a Ford transitional?  
7       You were aware of that?   Yes?

8                   A       I just wasn't focusing on that, so I  
9       can't say absolutely yes or no, they're weren't.

10                  Q       As you sit here today, you know that  
11       there are?

12                  A       You know, without looking at the list  
13       of people, I can't say that, you know.   I mean, that's  
14       the whole thing.   I mean, I don't commit this stuff to  
15       memory.   I deal with -- deal with reports.

16                  Q       I understand.   It's the practice that a  
17       salaried person who joined ZF Batavia since 1999,  
18       they're allowed to negotiate their salary?

19                  A       Well, I mean, anytime, you know, when  
20       you come in, you know, you come in with a certain  
21       salary and people have to make it attractive to you,  
22       sure.

23                  Q       So you might have someone who had 20  
24       years of experience at a different plant who comes in  
25       and is actually brought in at a salary higher --



1 A Let's put it this way --

2 Q Well, let me finish the question --

3 A Oh, okay.

4 Q -- if I could.

5 A Sure.

6 Q Someone can come in who has a certain  
7 amount of experience at a different plant, they come in  
8 and their starting salary is actually higher than  
9 somebody who is a Ford transitional in an equivalent  
10 position? That occurs, correct?

11 A Yeah. And I think what -- you know,  
12 now that we've talked a little bit, in my head I can  
13 come up with some -- some MR level people that are paid  
14 more than MR -- you know, an MR ZF Batavia person paid  
15 more than a MR Ford transitional. So, yeah.

16 Q That may not have been clear on the  
17 record. As you sit here thinking about it, you know  
18 that there are some ZF Batavia new hires who make more  
19 in base salary than a Ford transitional in an  
20 equivalent position?

21 A Yes.

22 Q And based on that understanding of how  
23 it is today, you certainly wouldn't be surprised if  
24 there were such employees in that circumstance that  
25 I've described in '99 and 2000 when these bonuses were

1       paid, right?

2                   A           There were probably some.

3                   Q           So in those instances someone who was  
4       Ford transitional would have actually received a  
5       smaller bonus than a corresponding person who is a ZF  
6       Batavia new hire based on the application of this  
7       formula?

8                   A           Somebody who is in that situation, what  
9       you're saying is that they were paid less than the ZF  
10      new hire.   Yes.

11                  Q           I had said before -- we were talking  
12      about somebody who made \$50,000 as a ZF Batavia new  
13      hire versus somebody making \$60,000 as a Ford  
14      transitional.  It's possible just using those numbers  
15      that a ZF Batavia new hire may have made \$60,000, a  
16      Ford transitional person at the same level made  
17      \$50,000, and actually the percentage for the AIP bonus  
18      was lower for the Ford transitional person?

19                  A           That they would have gotten, yes.

20                  Q           Okay.  I think, Mr. Huebner, we'll talk  
21      in a little more detail about the AIP at the end of the  
22      deposition, for what it's worth.

23                  A           Okay.

24                  Q           I just want to get a general  
25      understanding.  The 2001 AIP bonus which was paid out

1 in 2002, individual performance was a factor in the  
2 calculation?

3 A Yes.

4 Q And as a component of that, the AIP  
5 bonus was affected by how much overtime a salaried  
6 person had worked?

7 A Yes.

8 Q And generally speaking, if you worked a  
9 certain amount of overtime, your AIP bonus was either  
10 reduced or eliminated entirely?

11 A Yes.

12 Q And that was something that was new for  
13 the 2001 AIP bonus that hadn't happened with the 2000  
14 and 1999 bonus?

15 A Yes.

16 Q And is it my understanding that that  
17 change in the AIP came from the top, Mr. Adams?

18 A It was a -- I mean, it came from some  
19 discussion that the accounting people -- you know,  
20 let's say Mark Bugajski, being the controller, were  
21 making people aware that by their figures, you know, we  
22 were spending an excessive amount of money in overtime  
23 and that for that particular year, and I don't remember  
24 the exact figures, but we've blown the budget quite a  
25 bit. And so I'm sure he made that known to everybody

1 in the TMT as time was going on. I mean, I don't  
2 attend the TMT meetings, but I suspect that's what they  
3 talk a lot about is how we're doing against budget and  
4 so all of the TMT members would have been aware that,  
5 you know, that's -- that's a problem. And so the -- my  
6 understanding is is that Dave Adams did want that lack  
7 of achievement on the overtime front reflected in the  
8 AIP.

9 Q All right. As I said, I think we're  
10 going to return to the subject of AIP, just to give you  
11 a roadmap, if you will.

12 A Okay.

13 Q But let's turn to a different subject.  
14 Do you have Exhibit 16? These two exhibits you can put  
15 aside.

16 A Okay. And I keep the green tags with  
17 green tags?

18 Q Yes.

19 A Okay.

20 Q All right. Exhibit 16 you've seen  
21 before today, Mr. Huebner, correct?

22 A Yes, sir. Yes.

23 Q And Exhibit 16 is a copy of a notice  
24 sent out, I think, under Mr. Sennish's signature, if  
25 you will?

1 A That's correct.

2 Q And this was an announcement of a new  
3 policy regarding salaried employees, that from that  
4 point forward they would need to engage an electronic  
5 reader as they enter the plant and as they exit it.

6 A Yes.

7 Q Do you recall, just generally speaking,  
8 my asking Mr. Sennish about this at his deposition?

9 A Yeah, I remember it came up.

10 Q And it's a fact that the foreign trade  
11 zone did not require that salaried employees engage the  
12 reader when they exit; is that right?

13 MR. HUNTER: Objection to the extent  
14 that you're requesting a legal conclusion from  
15 Mr. Huebner. He does not have a legal  
16 background.

17 THE WITNESS: Okay. I don't know that  
18 -- at the time that this was written I didn't  
19 get involved in the foreign trade zone rules.  
20 I was just involved in looking at it from more  
21 of an HR perspective, so I have not read the --  
22 the statute. I think I've looked at -- at one  
23 point in time, you know, I might have looked at  
24 a summary or something from one of the other  
25 people, but I don't know exactly.

1 MR. SIMON: And I understand you're not  
2 a lawyer. I wasn't really looking for a legal  
3 conclusion on that.

4 THE WITNESS: Yeah.

5 BY MR. SIMON:

6 Q I imagine that the subject of this new  
7 policy was discussed in your policy committee meeting?

8 A No, it wasn't. At least, you know, is  
9 your question: Was it before it was issued discussed?  
10 And my recollection is that it wasn't.

11 Q Okay. You had worked on issues  
12 regarding this notice before it was sent out, right?

13 A Yes.

14 Q And obviously you worked with Mr.  
15 Sennish on that?

16 A That's correct.

17 Q Was this a secret plan the two of you  
18 had or did you involve anybody else from management?

19 A Mr. Sennish -- and I don't know if  
20 anybody else in our department had much involvement in  
21 -- in the foreign trade zone thing, but there were  
22 groups of people working on the foreign trade zone  
23 issue, signs posted, things of that ilk. You know,  
24 today when you walk in, there's a big blue sign about  
25 foreign trade zone. So that had been -- people had

1       been working on that sort of thing. It just wasn't one  
2       of the things I was working on. And as I recall, Len  
3       sent me an e-mail and said "I'd like to send this out.  
4       Give me your thoughts," that sort of thing. And so  
5       that's when I became aware of -- of this memo or the  
6       concept, I mean.

7               Q       I understand it wasn't formally raised  
8       at a policy committee meeting, but, I mean, did other  
9       members of management like Mr. Kehr, Mr. Newark, were  
10      they aware that this notice was going to be sent out?

11             A       I assume so, but I don't remember  
12      talking about it with anybody in terms of, you know,  
13      somebody like Karl Kehr or Dave Adams. I mean,  
14      basically I talked about it when Len said "Okay. Pick  
15      a couple people and find out -- you know, do some  
16      testing on them to see what their opinion is." So, you  
17      know, I just went to a few folks in management, you  
18      know, I said "Okay. We're going to hand this out.  
19      What do you think?"

20                    So -- but, I mean, the assumption is --  
21      I mean, Len is my superior, so I'm assuming that he's  
22      talking about this sort of thing with other -- other  
23      members of management at that level.

24             Q       Did he go to Dick Newark about it; do  
25      you recall?

1           A           You know, I don't know that or I don't  
2           remember it anyway, you know, in terms of who he may or  
3           may not have spoken with. I mean, this is a -- I mean,  
4           it's the kind of thing that, like I say, the foreign  
5           trade zone work had -- it seems to me that there was a  
6           committee of people that were working on the various  
7           items on it. I mean, I would have thought that he  
8           would have talked to Dick about it because, you know,  
9           Dick has a lot of people.

10          Q           It would be your expectation that Dick  
11          Newark would want to know that this was going to  
12          happen?

13          A           Yeah.

14          Q           As I understand it, there was some  
15          concern that salaried people aren't going to appreciate  
16          that they have to do it, swipe in and swipe out, number  
17          one, and number two, that they were going to have the  
18          requirement to swipe out and the union hourly employees  
19          would not have that requirement, right?

20          A           There was -- you have to try and  
21          separate before and after. I mean, beforehand -- I  
22          mean, just reading it, you know, just having some HR  
23          experience, I looked at it and I thought well, there's  
24          going to be a certain group of people that don't care  
25          and that there are going to some people who -- who



1 might take exception to -- you know, to having to swipe  
2 in and out. But --

3 Q I thought -- and I don't think I  
4 brought this with me today, but I thought there was an  
5 e-mail back and forth between you and Mr. Sennish where  
6 somebody was concerned that if you put it out, you post  
7 this notice somewhere where the hourly people see it,  
8 they might actually kind of, for lack of a better word,  
9 harass the salaried employees.

10 A That was -- yeah, that was probably  
11 discussed because the -- as you've pointed out, there  
12 -- there was not an attempt at that time to have the  
13 hourly employees do that. It's a collective bargain,  
14 you know, facility and so if they were going to do  
15 this, it would have to be subject to at least some  
16 collective bargaining considerations. And I think  
17 Len's feeling was that -- my recollection of it anyway  
18 was that they were going to be accounted for in other  
19 ways anyway so that we would meet the spirit of the  
20 needs here.

21 And I think the needs, the way it was  
22 explained to me is that we need to have a good handle  
23 on who's coming and going in the building, you know,  
24 from a security standpoint because it's -- in a sense  
25 it's a big -- my understanding of it is it's sort of

1       like it's a big warehouse and so you have to secure the  
2       area.

3               Q       Was it your understanding that a  
4       motivation for requiring salaried employees to swipe in  
5       and swipe out was to hold salaried people accountable  
6       for being in the plant when they say they're in the  
7       plant?

8               A       That was one of the things that -- you  
9       know, that came up in the discussions because, I mean,  
10      Len wanted to make sure that, you know, people were  
11      aware that -- that, you know, we reserve the right to  
12      take a look at these things if we needed to, you know,  
13      verify whether people were here or not.

14                    There was a lot of, at that time,  
15      concerns that employees of all levels, salaried and  
16      hourly, there was -- there were some people that were  
17      thought either not to be working when they said they  
18      were working and things of that ilk. So in order to  
19      have -- to make people aware that, you know, those  
20      could be used, that kind of wording was put in here.

21               Q       I'll hand you a two-page document, Mr.  
22      Huebner, that we'll mark as Exhibit 138.

23               A       Okay.

24               Q       Exhibit 138 is two documents, an e-mail  
25      that is -- a series of e-mails that's Bates stamped

1       2399, and 2400 is the second page and that's the  
2       notice. I'm not sure, Mr. Huebner, have you seen these  
3       -- I'll represent to you that the e-mail, one of them  
4       is from you. Have you seen this before?

5               A       Yes.

6               Q       And as you read this, is this notice  
7       that's attached on 2400, is that what you attached to  
8       your e-mail do you believe?

9               A       Well, I'd have to compare them.

10              Q       That's all right. That's okay.

11              A       Yeah. Because there's one of the  
12       underlined parts in there.

13              Q       Looking at --

14                      MR. HUNTER: Steve, they are different,  
15       for what it's worth.

16                      THE WITNESS: Yeah.

17       BY MR. SIMON:

18              Q       What are the differences that you've  
19       identified, Mr. Huebner? And we're comparing page two  
20       of Exhibit 138 with Exhibit 16.

21              A       Well, there's one section that's  
22       underlined that stands out here, to enter as well as  
23       exit. That's about the fifth line down. So that's  
24       underlined. And --

25              Q       We don't have to go through that

1 exercise. That's fine. I just was trying to establish  
2 that it was just a draft.

3 Did you actually draft the notice first  
4 and then give it to Mr. Sennish to edit; is that how it  
5 worked?

6 A No, no. This one here, Len prepared  
7 the notice and then asked me my opinions. And so I --  
8 I did some rearranging in terms of just, okay,  
9 communication value, you know, what are you trying to  
10 say here and that sort of thing.

11 Q The two sentences that read "Please be  
12 advised that salaried time sheets will be audited  
13 against Honeywell system readouts," and the sentence  
14 that immediately follows that, do you know who wrote  
15 those two sentences?

16 A Okay. Which paragraph? That's the  
17 third -- oh, "Please be advised..." -- okay, that one  
18 there and then the which one, the one following that?

19 Q Mm-hmm.

20 A Okay.

21 Q Do you recall if those were sentences  
22 that you added or that you revised? Do you recall?

23 A I don't remember precisely about  
24 modification. This was -- my recollection was is that  
25 that's part of Len's original memo and whether or not I

1 might have modified that a little bit, that -- that may  
2 have happened.

3 Q Reading your memo that's on the first  
4 page there that you sent on August 27th, which I'll  
5 represent was two days before the notice was sent out,  
6 I guess, apparently you had done some research about  
7 how this practice might be impacted by the FLSA; is  
8 that fair?

9 A Yeah. Part of this was that Len gave  
10 me the memo and said what do you think and then, second  
11 of all, he said well, ask a couple of people, you know,  
12 how they'll react, do some sensitizing or customer  
13 listening or whatever you want.

14 And so one of the people that I gave it  
15 to was another coworker in my department, Blandina  
16 Jabbari, and she just said well, you know -- kind of  
17 vaguely saying well, gee, aren't there some, you know,  
18 things that you have to be careful of with respect to  
19 salaried employees and timekeeping and things of that  
20 sort, so that then I went to several documents -- I  
21 don't remember them all, but I remember going to the  
22 Society of Human Resource Management web site and  
23 pulling out some stuff that they had and looking at  
24 that, and that's where the information on this memo  
25 came from.

1           Q           In those two sentences that we were  
2           discussing on the notice itself, since the issuance of  
3           this notice has ZF Batavia made any pay adjustments  
4           based on discrepancies between salaried time sheets and  
5           Honeywell system readouts?

6           A           I don't recall any. The -- there could  
7           have been some times. I mean, you know, it's hard when  
8           you work in an environment like we do where there's  
9           things going on with hourly and salaried people, you  
10          know, all together and stuff, you hear about things.  
11          But I'm not aware of -- if it has happened, it's  
12          certainly a rarity. And I think the -- the use of  
13          these Honeywell things is more broader than that, I  
14          mean, as the, you know, disciplinary situation, you  
15          know. Somebody might, you know, take a look and say  
16          well, okay, were they -- were they here, were they  
17          supposed to be here or whatever. I mean, that -- there  
18          has been some looking at it, but it's not something  
19          that's regularly looked at or certainly not compared to  
20          time sheets, you know.

21          Q           On occasion there's been employees who,  
22          people in management or otherwise, have compared  
23          Honeywell system readouts against time sheets?

24          A           There has been some when -- it seems to  
25          me that there has been a supervisor or two that have --

1 and, quite honestly, now when I'm saying this, most of  
2 this is coming from hearsay from somebody else. They  
3 don't come to me and say "Can I get a reading printed  
4 out from the Honeywell reader?" They go to, you know,  
5 Marty Robbins and they request it from Marty. So I --  
6 you know, I know that Marty has said to me that there  
7 have been, you know, some supervisors who have  
8 requested -- you know, taken a look at the readouts to  
9 kind of have a check and balance against the -- the  
10 time sheets.

11 Q Did Mr. Robbins give you any indication  
12 how many times that's happened where a supervisor has  
13 come to him and said "I'd like to look at the  
14 readouts"?

15 A It's -- it's not a frequent thing, but  
16 it happens from time to time. My understanding, from  
17 what Marty says, is that more readily what happens is  
18 that somebody will get all wrapped up in their work,  
19 somebody who, you know, has been doing -- you know, is  
20 eligible for getting overtime pay and they'll get all  
21 wrapped up in their work and they'll lose their  
22 overtime planning sheet or whatever and they'll come  
23 and ask him, you know, on their own, you know, "Let me  
24 -- let me see my readings just to verify," that sort of  
25 thing rather than -- more so than management, you know,

1 people, but there have been some.

2 Q There have -- we'll be talking to Mr.  
3 Robbins tomorrow.

4 A Yeah.

5 Q But Mr. Robbins gave you an indication  
6 that at least in some instances supervisors have come  
7 to him --

8 A Mm-hmm.

9 Q -- and said "I want readouts for  
10 another employee, my subordinate..." --

11 A Yeah.

12 Q -- "...and I want to check his or her  
13 readouts", right?

14 A Yeah.

15 Q It's happened more than once?

16 A Yes.

17 Q And do you know -- based on someone  
18 looking at those readouts, do you know if perhaps  
19 during those instances pay adjustments were made?

20 A I can't bring any to mind that I'm --  
21 I'm aware of.

22 Q Okay. In your e-mail you kind of laid  
23 out the lay of the land for Mr. Sennish regarding the  
24 FLSA and so forth. In your e-mail you write "Len, I  
25 modified your memo to put the foreign trade zone on the



1 top and modified the timesheet/readout paragraph to  
2 retain the 'notice' quality, but to make it look like  
3 we're looking for major issues rather than to get on  
4 your case if you're 10 minutes late one morning."

5 A Mm-hmm.

6 Q Is what you said there accurate? Was  
7 that a concern of yours?

8 A Well, it was something that, you know,  
9 with salaried employees, you know, there's got to be  
10 some flexibility and I thought that if we tried to make  
11 a communication that said well, look, this is -- you  
12 know, we're not denying that it could be used if we've  
13 got a concern about when you're here and when you're  
14 not here, but on the other hand, it's not like it's our  
15 daily practice to sit up there as judge and say oh, I'm  
16 going to flip through the Honeywell readouts.

17 I mean, you know, Len never gave me  
18 that impression that that's what this was all about and  
19 it's not happened that way, that people sit up there  
20 and use this as a regular tool.

21 Q I understand. It was never your  
22 intention to deduct somebody -- excuse me, to make a  
23 pay adjustment if they were ten minutes late; you  
24 didn't want to give people that indication, right?

25 A Yeah.

1                   Q           Obviously a more serious situation is  
2           if you learn that someone isn't coming -- they say  
3           they're coming in to work at 9:00, they're really  
4           getting in at 11:00 on a Monday, for example; that  
5           would be a more serious concern?

6                   A           Well, that -- that kind of thing, yeah,  
7           where are you. Yeah.

8                   Q           And so if we look at the time sheets  
9           and look at the readouts and you say you're coming in  
10          on a Monday at 9:00 and it says you're really coming in  
11          at 11:00 a.m., there may be some pay adjustments?

12                  A           Well, not in that sense. I mean, it's  
13          a matter of okay, you know, what's the story here, you  
14          know. You're supposed to be here at a certain time,  
15          you weren't. And so I think it depends on what the  
16          circumstances are. I mean, if -- you know, we don't  
17          dock people because of, you know, not putting in the  
18          full eight hours, but on the other hand, you know, if  
19          somebody is not representing their overtime in an  
20          honest and fair manner, I mean, we've got a right to  
21          question that.

22                  Q           Let's say that's what you found out.  
23          Let's say you do an investigation, somebody comes in  
24          two hours late on a Monday and you find out, you check  
25          against the readouts, this person, in fact -- a

1       salaried person, in fact, came in two hours late, you  
2       find out that it's just fraud, that they're lying about  
3       when they come in, I imagine this is a situation where  
4       there may be a pay adjustment; fair enough?

5               A       Well, there -- there -- again, it's --  
6       you know, you're bringing up a hypothetical thing and I  
7       think that discipline is perhaps a better realm of, you  
8       know, coming in. I think that if people were saying  
9       that they were here on Saturday, for example, and they  
10      weren't here on Saturday or whatever it might be, that  
11      that would -- that would come up and so -- but there --

12               And, again, there are other reasons to  
13      have this sort of thing. You know, not being in the  
14      authorized place, you know, that sort of thing that,  
15      okay, what are you doing swiping in on that door or  
16      something like that if somebody is in where they  
17      shouldn't be or whatever. And there's a lot of  
18      potential reasons for having that.

19               Q       And, again, to be fair, when you sent  
20      out this notice that you reviewed with Mr. Sennish, you  
21      didn't want to give the impression that pay adjustments  
22      were a possibility if you're ten minutes late, right?

23               A       Yeah.

24               Q       We've talked just now about a more  
25      serious situation where there's a two-hour discrepancy

1 and there's no good reason for it. That's certainly a  
2 more serious situation, right?

3 A Yeah.

4 Q And you've talked about whether  
5 discipline may have been a consequence, right?

6 A Well, if -- if somebody who, you know  
7 -- you know, I guess it's not a simple matter. I mean,  
8 if somebody, you know, put down -- you know, there's a  
9 two-hour discrepancy, there would be a lot of  
10 questions, you know. And that -- well, first of all,  
11 the -- the manager would have to somehow notice that  
12 this was -- that there was some sort of -- you know,  
13 he'd have to have some sort of reason.

14 So, for example, gee, let's say that  
15 somebody works for Dick Newark, and Dick Newark needed  
16 a report at a certain time and Dick Newark came and  
17 said to this guy, hey, this was supposed to be here and  
18 I went over there and you weren't there. Where the  
19 heck were you? You know, I mean, it's these kinds of  
20 circumstances that people say, well, you know, yeah,  
21 where was he? And then if the -- you know, if the time  
22 sheets don't -- you know, don't add up, the -- the --

23 Q Can I interrupt you for just -- go  
24 ahead. I'm sorry.

25 A Yeah. I mean, you have to take a look

1 at this as a -- as a system, I guess, and that is is  
2 that most employees are very honest about what they do.  
3 From time to time there are people who -- who aren't  
4 honest about various parts of their employment and so  
5 in the process of investigating and disciplining  
6 people, this is something that could have been used as  
7 a tool. And so I think that's the context in which Len  
8 was thinking about, okay, just make you aware that, you  
9 know, if we need to, we'll use it. And I think his  
10 thinking is from situations that had occurred I'm sure  
11 in the -- in the hourly group from time to time, where,  
12 you know, we only had one swipe, but there are times  
13 when people's swipes weren't jibing with when they were  
14 supposed to be at work. So, you know, he just wanted  
15 to make sure people were aware of it.

16 Q Right. What he wanted to make people  
17 aware of was that in the situation we've described, a  
18 person comes in on a Monday two hours late, you find  
19 that out after checking the readouts, there may be  
20 discipline such as something put in your file, right?  
21 That might be a result?

22 A Could be.

23 Q It could even be more serious like a  
24 suspension? I'm saying it's a possibility.

25 A I mean, it depends on the context. I

1 mean, you know, I just can't say how we would  
2 discipline somebody in any given situation unless I  
3 knew the facts and what was going on.

4 Q Sure. I'm just trying to understand  
5 the possibilities. One of the possibilities may have  
6 been a pay adjustment?

7 MR. HUNTER: Objection. That has been  
8 asked now probably three or four times.

9 MR. SIMON: My question has not been  
10 answered. I'd appreciate it if you could  
11 answer that.

12 THE WITNESS: Well --

13 BY MR. SIMON:

14 Q Yes or no, Mr. Huebner. You said that  
15 might happen as a possibility. If someone comes in on  
16 a Monday, is two hours late, you investigate it,  
17 there's not a good reason. As I understand this memo,  
18 a pay adjustment was a possibility; is that fair?

19 A Not in base pay, but in overtime it  
20 could have been adjusted because, okay, if, you know,  
21 you're saying that you worked two hours of overtime and  
22 you didn't, why should we pay you for the two hours  
23 that you didn't -- didn't pay.

24 Q Now, does this sentence anywhere say  
25 that we're going to make a pay adjustment only to your

1 overtime? Does it say that?

2 MR. HUNTER: Objection. The document  
3 speaks for itself. You're asking what the  
4 document says?

5 MR. SIMON: Yeah.

6 MR. HUNTER: The document says what it  
7 says.

8 THE WITNESS: No, it doesn't say  
9 anything about overtime.

10 BY MR. SIMON:

11 Q I mean, you went over this notice very  
12 carefully with Mr. Sennish before it was sent out,  
13 right?

14 A I mean, I worked on it, yes.

15 Q Did you -- in your mind were you  
16 communicating to the salaried workforce that only their  
17 overtime pay would be adjusted if their readouts didn't  
18 match up with their time sheets? Is that what you were  
19 trying to communicate?

20 A Well, that's the result that would --  
21 would occur. I think what's -- what was in people's  
22 minds is the -- you know, at this time there was a lot  
23 of concern about overtime, so, I mean, that's what --  
24 you know, what the thinking would be. I mean, you know  
25 --

1                   Q           You're saying that concerns about  
2                   overtime motivated this notice?

3                   A           No. But, I mean, in terms of -- you  
4                   know, as far as I know, Len came up with this related  
5                   to the foreign trade zone. I mean, that's the way he  
6                   told me. But, I mean, this -- this part here, you  
7                   know, pay adjustments, I think that the kind of  
8                   thinking or talking at the time was related to concerns  
9                   about overtime. I mean, there weren't, you know,  
10                  people concerned about, you know, people working their  
11                  normal time.

12                               I think, you know, you have to think of  
13                  the context of this was that it was pretty unusual --  
14                  you have to remember that we were making the  
15                  transmission for the Escapes and this is a very busy  
16                  place and people were working lots of hours and so the  
17                  issues that were coming up related to overtime. It  
18                  wasn't so much, you know, was the person physically  
19                  there or whatever.

20                  Q           When you told me that Mr. Robbins had  
21                  told you that supervisors had come up to him and asked  
22                  him for readouts, I mean, he didn't tell you they were  
23                  just checking to see if they had worked the overtime  
24                  that they purported, did he?

25                  A           I don't know that Marty knew exactly,



1 but I'm assuming that it was about overtime because  
2 that's typically what the -- you know, what the  
3 questions come about.

4 Q Well, you said there was -- you were  
5 talking about hypotheticals, but you said that a  
6 situation that might come up is Dick Newark needs a  
7 report by a certain point and he goes and he goes to  
8 that person for the report and he's not there.

9 A Yeah. Where are you?

10 Q Yeah, where are you. And that could  
11 happen on a Monday or a Tuesday or Wednesday or  
12 Thursday, right?

13 A Exactly.

14 Q So definitely one of the motivations  
15 for this notice was you were concerned about where  
16 salaried employees were Monday through Sunday?

17 A Well, hypothetically, yes.

18 Q And it could be in the middle of their  
19 shift, it could be during overtime, right?

20 A Yeah, it could be.

21 MR. SIMON: We're at a good stopping  
22 point. Five minutes, if that's all right.

23 MR. HUNTER: Yeah.

24 (RECESS)

25 MR. SIMON: We're back on the record.

1 BY MR. SIMON:

2 Q Mr. Huebner, I told you we were going  
3 to come back to the AIP, so --

4 A Okay.

5 Q -- the moment has arrived. Exhibit  
6 139. I'm afraid you're going to have to share again  
7 with Mr. Hunter.

8 A Okay.

9 Q It appears that that's an e-mail  
10 exchange capturing a couple of e-mails that you wrote,  
11 Mr. Huebner.

12 A Mm-hmm.

13 Q And it looks like we're missing a page.  
14 Is that your understanding? It ends at kind of an odd  
15 note.

16 A This -- I mean, not that I've never  
17 hung a single bullet out all alone, but I would have  
18 typically put an A and a B usually.

19 Q Right. But minus that perhaps defect,  
20 does this series of e-mails kind of describe, at least  
21 in some detail, your thought process regarding  
22 calculating the AIP for 2001, factoring in this time,  
23 though, the amount of overtime a salaried employee  
24 worked?

25 A It's certainly representative of my

1 train of thought. It became -- you know, people  
2 mentioned to me in various meetings and what have you  
3 that overtime for the prior year was a serious problem.  
4 And if you think about how people think, human  
5 resources people usually focus on people one at a time  
6 and the accounting people focus in aggregate numbers.  
7 And so I think the accounting people were saying we  
8 really have a lot of overtime exposure, and my role was  
9 to provide some further understanding about how that  
10 was spread out by people.

11 Q Near the bottom of your e-mail you  
12 write "Did the employee who worked a lot of overtime  
13 fail to manage his work, or was he being a good guy and  
14 taking more overtime than other people?"

15 A Yes.

16 Q As it ultimately turned out in the 2000  
17 bonus, could someone have worked significant amounts of  
18 overtime, but still received an AIP bonus that wasn't  
19 reduced because of the fact that he was judged or she  
20 was judged to have been a good employee?

21 A The rule that was followed was that the  
22 director level personnel, the TMT members, in general  
23 were to take overtime into account, but on the other  
24 hand, if there was someone whose output and  
25 contribution was such that they felt that they still

1       deserved AIP because of the merit of their output, the  
2       quality of their output, that they could get AIP in  
3       spite of the fact it would have otherwise been reduced  
4       or eliminated because of the overtime consideration.

5               Q       All right. Turn that one over. This  
6       is Exhibit 140. Have you seen Exhibit 140 before?

7               A       Yes, sir.

8               Q       What does this represent?

9               A       This is the chart that indicates how  
10      the organization did against certain important  
11      measurables for the company, and in doing so, it shows  
12      what the target achievement was, what the actual  
13      achievement was, and some sort of measurement in terms  
14      of, okay, how does that equate to the plan that was set  
15      out for the board of directors for this -- for the  
16      payment of bonus.

17              Q       And then in the corner it says total  
18      percent 82.29%, right?

19              A       Yes.

20              Q       That's the total for what you call the  
21      measurables, right, safety, quality, delivery,  
22      financial?

23              A       That's correct.

24              Q       Explain to someone who doesn't know.  
25      What does the 82.29% mean?

1           A           Well, if we take one or two examples we  
2           can -- you know, I can then build from the one or two  
3           examples to the total.

4                       So if you take a measurement that we  
5           did very well on, OSHA incidents, for example, the  
6           third one, you'll see that the -- the measurement was  
7           3.8 and that the expectation was is that we would come  
8           in at 5. And by looking at that, 3.8 is good and,  
9           quite honestly, it's above where the target was set for  
10          150%, so on that particular measure the chart is saying  
11          that, hey, on that measurement we did well and so we  
12          did 150% of -- of what we -- I mean, you know, doing  
13          what was expected would show 100% and we did much  
14          better. So taking those, and there are ratings in  
15          here, that's the last couple of columns on the right,  
16          and then adding them up comes to, okay, how did we do  
17          in general versus, you know, what we thought we were  
18          going to do and so we came up to 82.29.

19                      Then at the bottom the -- this gets to  
20          the part where it's difficult for people to understand,  
21          but the -- how do I best put this? If -- if we flat  
22          made expectation on every measurable, then we would be  
23          then at 100%. And the way this system is designed,  
24          that the payout then is if you hit 100%, then you're  
25          entitled to 75% of the maximum, and so doing it that

1 way allows you then in a good year to -- you know, it's  
2 the way you -- in a good year you're going to get close  
3 to the maximum. In a normal year you're going to hit  
4 around 75% of the maximum, okay?

5 And so other bonus systems turn the --  
6 they all have some sort of concept like that. They  
7 sometimes express it in a different way for  
8 understanding. Quite honestly, most of them are  
9 somewhat confusing unless you're really good at math.

10 Q Okay. One of your tasks, though, in  
11 your position in 2001 was to figure out, to understand  
12 this stuff?

13 A Yeah. I mean, the -- the controller  
14 works with higher-level management than I in terms of  
15 coming up with the goals and the weightings and so  
16 although I'm involved in this in terms of working with  
17 the controller on this chart, he -- Mark Bugajski, the  
18 controller, really is the lead individual on this.

19 Q And you weren't necessarily a decision-  
20 maker in terms of what bonuses people are going to get.  
21 You were told to put the numbers together to -- well,  
22 how would you explain your role in AIP?

23 A My role in AIP is a coordinative one.  
24 I'm looked at, first of all, to make sure the process  
25 is moving along as it should and I prepare several

1 steps in this process. I prepare the -- I work with  
2 the controller, but basically what he does is --  
3 sometimes he's given me the raw numbers and I put them  
4 in here, but most of the time he takes the raw numbers  
5 from the various sources and puts them together  
6 because, quite honestly, he's got much more -- most of  
7 that at hand much more readily than I.

8 But there are several -- several  
9 things. We mentioned before the maximums that the  
10 bonus will pay by band. One of the processes that was  
11 decided upon in the company at its inception was that a  
12 part of the -- the pay that might normally be paid in  
13 merit form was going to be deferred till the payment of  
14 bonus and in that way over a period of time the amount  
15 of pay that you came to get was more variable and it  
16 related upon incenting people to have focus on  
17 achieving the important measurables that -- that they  
18 were working towards. And so one of the things in my  
19 job is to take the amount -- you know, take whatever  
20 amount is decided upon, and it's been one percent  
21 that's been -- of what the potential merit pool could  
22 have been by other measures. We take one percent of  
23 that and then we apply it to the bonus. And that's a  
24 fairly complex formula that was derived by Karl Kehr,  
25 but basically it has to do with, okay, there were so

1 many people here at the end of the year that generated  
2 the pot of money. It had a certain proportion of  
3 administrative band GSRs, MRs and that sort of thing,  
4 and so we will spread those dollars across the -- the  
5 pay that we have for people this year. And it comes  
6 out that, okay, rather than the maximum being 6.9, it's  
7 now 7.1 or .2, something like that. So the idea being  
8 that on a gradual basis we are taking the company's  
9 resources that are available and making the pay  
10 totality more variable based on objectives. So that's  
11 going on.

12 In addition to that then, what I do is  
13 I compute the -- you know, prepare the tables so that  
14 we have lists -- we make lists of the employees, what  
15 their rate of pay is and, you know, identify what the  
16 achievement here is and then provide for each director.  
17 And this is done at the director level, so for  
18 manufacturing, for example, Dick Newark gets it, you  
19 know, Len Sennish gets it for HR. We give people a  
20 list of everybody and say, okay, well, they make so  
21 much money and the -- the award percentage for their  
22 given category if they're Ford transition and an MR  
23 level, then they're going to get X percent as the base  
24 amount or the -- the -- you know, I forget the term I  
25 used, but, you know, the raw mathematical score that



1 comes out is generated. Then there's a blank in the  
2 form. And so we give that out to the director-level  
3 people and say, okay, at the bottom here is your total.  
4 It's your responsibility then to distribute the AIP  
5 based on, you know, your assessment of their -- their  
6 performance. And so then they take the money and  
7 spread it around. So, for example, it may be that  
8 somebody gets the exact formula amount and it may be  
9 that they don't. They may get more than that or less  
10 than that. The application of that varies between  
11 departments. But that's -- that's kind of the process  
12 we go through.

13 Then I get the input back from the  
14 directors, put it in a general spreadsheet and then I  
15 sit down with Len Sennish and Karl Kehr and see if they  
16 have any, you know, issues or concern with it. And in  
17 general there's, you know, great deference given to the  
18 judgment of the line managers, but on the other hand,  
19 if there is something that doesn't look right to  
20 anybody, you know, we'll bring it out and discuss it.

21 And sometimes there are unusual  
22 circumstances. I'm reminded by one of these sheets,  
23 there was a guy on military leave one time, so how do  
24 we do that, stuff like that.

25 Q That last part where the directors then

1 are given a form and they have to decide how to  
2 distribute the AIP among their people, that part was  
3 new in 2001; that had not been done in 2000, 1999,  
4 correct?

5 A No. In 1999 the sheets were given out  
6 to the line managers by my predecessor and people made  
7 the awards. At least that's the way it was explained  
8 to me by Tony. In 2000 it was decided that -- and,  
9 again, you have to think of the context at the time.  
10 In 2000 you had -- there was some concern about the  
11 original performance review form that we used and also  
12 there was a huge influx of people, so we had a rather  
13 large influx of line managers and a large influx of,  
14 you know, professionals come in, engineers, group  
15 leaders, people like that. And so the thought was is  
16 that given that was a time when a lot of people were  
17 getting to know one another and their behavior and  
18 everything like that, it was probably better to pay it  
19 out on a level basis and that decision was made.

20 Then the following year -- you know,  
21 because knowing from Tony that the original one was  
22 discretionary and from, I suspect, conversations with  
23 Karl as well, you know, then I brought it up again,  
24 okay, how are we going to do it, you know, this year.  
25 And, you know, then the discussion was is that we were

1 going to revert back to that discretionary basis of  
2 making the awards.

3 Q Well, in 1999 it was a flat percentage  
4 that was used for employees for their bonus depending  
5 on what grade level they were in and whether they were  
6 ZF Batavia new hire or Ford transitional?

7 A The ultimate award?

8 Q Mm-hmm.

9 A No. What I -- I mentioned in our  
10 earlier conversations was that I was told by Tony that  
11 there was some discretion used in the amount of award  
12 given to some of the -- some of the people.

13 Q So it was based on individual  
14 performance?

15 A Yes.

16 Q In '99?

17 A Yes.

18 Q And then -- I'm sorry -- the 2000 AIP  
19 bonus, was individual performance factored in?

20 A No.

21 Q All right. And you described the  
22 process for the AIP 2001 bonus. The directors would  
23 make their recommendations for AIP bonus and then you  
24 and some other people in HR, I'm not sure who else,  
25 would review it and may make adjustments?

1           A           No. Basically when the AIP came up, we  
2       would aggregate it and I would sit with Karl and Len  
3       and we would discuss -- you know, I mean, it's a big  
4       list of department by department what the line manager  
5       had wanted to award. And so, like I said before, there  
6       was great deference given to the directors and what  
7       their judgment was. And that if, for example, somebody  
8       took exception to something -- and it didn't happen a  
9       lot, but, I mean, you know, it did happen -- then one  
10      of us would go back to whomever and say, well, gee,  
11      this was a concern brought up. What's the story? And  
12      then either they'd make a further adjustment based on,  
13      you know, the facts or else they'd leave it the way it  
14      is and say, well, this is what my reasoning was and  
15      people would agree.

16                    I mean, you know, it's -- it was  
17      intended to be, you know, just another set of eyes, you  
18      know, looking at it, but for the most part the director  
19      was responsible for making those decisions.

20           Q           Just very briefly, if we focus on merit  
21      increases, was it the same process, that directors  
22      would make a recommendation and then another group of  
23      people, perhaps including yourself, would review it and  
24      if there was a problem, you would go to the director  
25      and say how did you come up with this?

1           A           For merit the cascade of information  
2           went further down in the organization. Typically it  
3           went to anybody -- you know, a list would go to anybody  
4           who managed salaried employees and then they would, you  
5           know, do the performance review and come up with a  
6           merit recommendation and then that would have to go to  
7           the director, who would then aggregate and then -- and  
8           then say, well, gee, this makes sense or this doesn't  
9           make sense.

10                   Let me give you the classic example.  
11           Someone who is a line manager that manages six people  
12           sees a fairly wide range of performance and has a  
13           pretty good gauge about what good and okay is and that  
14           sort of thing. Somebody who is a manager who manages  
15           one person has a much more limited scope and could --  
16           may have less of an accurate idea of what, you know,  
17           the performance is relative to -- relative to others.

18                   So the -- having the fact that the line  
19           manager makes the recommendation and then the director  
20           makes the final, you know, approval and changes if  
21           there need to be is the way that -- that it works. And  
22           it's to get the -- the broader, mile-high view of the  
23           director involved in the decision-making.

24           Q           And who is at the mile high on the  
25           merit increase? Would that include you and Mr. Sennish

1 and Mr. Kehr?

2 A The -- once the director has filled out  
3 the sheets, then we get them and Len and Karl and I  
4 then, you know, look at what they've said and the same  
5 thing goes on, that we'll go back and talk to the line  
6 manager if there is something that seems out of -- out  
7 of the ordinary.

8 Q And basically -- I understand the  
9 difference, but basically that part of it where you go  
10 back to the director, that's how the AIP works as well,  
11 if you have a concern about the level of bonus that he  
12 or she wants to give out, right?

13 A Yeah.

14 Q So if an hourly employee is told in  
15 2002 --

16 A Well --

17 Q I'm sorry. Salaried.

18 A Okay.

19 Q Thank you. If a salaried employee is  
20 told in 2002 "You're not getting a 2001 bonus. One of  
21 the reasons is because you worked too much overtime,"  
22 that actually would be a fair description and  
23 explanation of why that person didn't get a bonus,  
24 right? That happened?

25 A Yeah.

1           Q           And if the person said "Well, I had a  
2           good evaluation. What's the problem?" and if you said  
3           "Well, 50,000 feet or a mile high someone else reviewed  
4           it and decided there's a problem here and you shouldn't  
5           get the bonus," that also happened?

6           A           Was -- were there people who made  
7           recommendations or the immediate manager made a  
8           recommendation and then the director didn't agree with  
9           it? Yeah, that did happen.

10          Q           Okay. Staying with Exhibit 140, I'll  
11          say generally speaking, 82.29 percent, did that reflect  
12          a good year?

13          A           This was '02. Well, I -- I mentioned  
14          that 100 would be hitting, you know, kind of where we  
15          had hoped to be and so it was -- it was not where we  
16          would have wanted to be. All right?

17                   And the second thing is is that if you  
18          look at the percent score, you will see that we did  
19          real good in some areas. Despite it being a very  
20          industrial place, it's a safe plant. You know, I mean,  
21          people care about safety. And on the other hand,  
22          performance to schedule was rather poor and -- in that  
23          particular year.

24                   As a matter of fact, no missed  
25          vehicles, what that means is that you've got a bunch of

1 people working in Kansas City and they're ready to go  
2 and they don't have a transmission to stick in the car  
3 and -- because of you here, you know, ZF Batavia. And  
4 that's a hugely expensive and very -- you know, it's a  
5 very large no-no and we happened to have one of those.  
6 So, you know, it's -- you know, so it's hard to  
7 globalize. We did good on some things and poorly on  
8 others.

9 Q Obviously you understood that the  
10 performance might be so bad in the plant that there  
11 would be no AIP; is that right?

12 A You mean is that a possibility?

13 Q Yes.

14 A Yes.

15 Q But obviously the performance was at  
16 least at an adequate level enough to warrant issuing  
17 AIP bonuses?

18 A Yes.

19 Q For each of the years that you've been  
20 there?

21 A Yes.

22 Q And is it fair to say that one of the  
23 motivations for having the 2001 bonus for the AIP  
24 factoring in individual performance, the reason that it  
25 was done that way is that Mr. Adams had said that he



1        wanted the operations to feel some pain and that he  
2        wanted to make sure that manufacturing puked that were  
3        taking their share of the pie through overtime payments  
4        during the year were going to have a lower bonus? Is  
5        all that true?

6                    A            That's a large question, but let me  
7        break it down to the pieces. My understanding through  
8        that -- you're referring to a memo from Mr. Bugajski to  
9        me and others, I guess. And, first of all, yes, you  
10       know, Dave wanted people, because our -- you know, our  
11       productivity was poor and our overtime was way beyond  
12       budget, he wanted to have that reflected in the payout  
13       and that's -- you know, that's clear.

14                                The use of the word puked is  
15       unfortunate. It was, you know, as I recall, Mr.  
16       Bugajski's words and not -- not Mr. Adams. And so I  
17       wanted to just make that clear to you, that my  
18       understanding was that those were Mr. Bugajski's words.  
19       The -- that use of terminology was just something that  
20       was tossed around for a couple of weeks just as kind of  
21       a joking kind of thing, so it's unfortunate but, you  
22       know --

23                                Let me stop there to say (A) yes, Dave  
24       wanted to make sure that people were made aware that we  
25       had some problems that year in those areas, and (B) I

1 don't believe that Dave used the word pukes. It was  
2 Mark.

3 Q Okay. Let's go through some of these  
4 reports that have been sent to me this week or last  
5 week by e-mail. Let's do them together. It will be  
6 141 and 142. 141 will be the report for 2000 AIP. 142  
7 will be the report for 2002.

8 A Okay. Go ahead.

9 Q All right. One second here. What I'm  
10 trying to do is get the three years of AIP that I have  
11 reports, Mr. Huebner, and kind of just make sure  
12 they're all saying kind of the same thing or they  
13 should be read the same way.

14 Just to add to your pile there, is  
15 Exhibit 37 available? All right. So you've got the  
16 three laid out before you. Let me actually start with  
17 it chronologically. We'll start with the 2000 one,  
18 which is Exhibit 141.

19 A Okay.

20 Q Now, this document was prepared and e-  
21 mailed to me and I actually scratched on the top  
22 9/26/03; that's when it was e-mailed.

23 A Okay.

24 Q That's my handwriting in the corner.  
25 This report, as you understand it, shows the AIP

1 bonuses that people actually received in 2001 for the  
2 2000 AIP, right?

3 A That's correct.

4 Q This is everybody?

5 A Yeah, that looks -- it looks complete.

6 Q Okay. It lists what category they work  
7 in, but the 2000 AIP appears to be alphabetical  
8 according to the individual's name, right?

9 A The 2000 one is in pay band order and  
10 then within pay band order the sort is whether you are  
11 a regular ZFBA or new hire, as we've been talking  
12 about, or a Ford transitional, and within that then by  
13 alphabet.

14 Q All right. We'll look at the first  
15 name on here, John Anderson. Do you see that?

16 A Yes, sir.

17 Q Band code A. So is that AC?

18 A Yeah. Yes, AC. And we use, you know,  
19 slightly different abbreviations in the computer from  
20 time to time, but yeah, he's an administrative band  
21 employee. He's a guard.

22 Q And the 3.4 percent is the percentage  
23 multiplier because that person is in band AC and  
24 because Mr. Anderson was a ZF Batavia new hire; is that  
25 right?

1           A           That's correct. An A without any  
2           modification would have been a ZF new hire.

3           Q           And obviously 3.4 percent of \$21,300,  
4           that's where we get the 12-month AIP figure of \$724.20?

5           A           That's correct.

6           Q           And is it prorated because he was only  
7           there nine and a half months?

8           A           That's correct.

9           Q           And then the final column, even though  
10          it's a little fuzzy on this copy, the final column on  
11          the right that says actual prorated payout --

12          A           That's right.

13          Q           -- that column reflects the AIP bonus  
14          that that individual received in 2001?

15          A           That's correct.

16          Q           As we look down to Lazarus Chapman, do  
17          you see that?

18          A           Yes.

19          Q           That person, based on the 3.0 percent  
20          figure we see, that's because Lazarus Chapman was a  
21          Ford transitional employee, correct?

22          A           That's correct.

23          Q           And I guess -- let's see if we can do  
24          this. Lazarus Chapman has a base salary of \$37,961.52,  
25          correct?

1 A That's correct.

2 Q And Michael Piccirillo, do you see that  
3 name above there?

4 A Yeah.

5 Q \$41,700, right?

6 A Right.

7 Q Because Mr. Piccirillo was a ZF Batavia  
8 new hire, his multiplier was 3.4 percent?

9 A That's correct.

10 Q So he actually -- that's an instance  
11 where someone who is in the same pay band as a Ford  
12 transitional who was a ZF Batavia new hire, he made  
13 more than the Ford transitional, yet his multiplier was  
14 higher?

15 A Yeah. Yeah. And this is -- this  
16 particular situation is is that Mr. Piccirillo is one  
17 of two senior guards, so they make a little bit more  
18 than the rest of the guards. And you'll note Mr.  
19 Howard, who is a Ford transitional, is at the same pay  
20 there as Mr. -- Jeff Howard and Mike Piccirillo. And I  
21 just happen to know that because they work in HR, but  
22 they're -- they're the two senior guards and so their  
23 pay shows the same. And you're correct, the Ford  
24 transition multiplier is -- is lower for the -- than  
25 the new hire.

1 Q That may be my only questions about the  
2 2000.

3 A Okay.

4 Q Just to stay in order, even though it's  
5 part of the exhibit binder, Exhibit 37 --

6 A Oh, yeah.

7 Q It's the green one.

8 A Yeah, it's the green one. All right.

9 Q Exhibit 37 is the 2001 AIP  
10 determination.

11 A Yes.

12 Q Actually you may have to help me along  
13 here, Mr. Huebner. I think at a certain page it begins  
14 with the individual employees. The first page  
15 obviously is not it. It may be -- I think it's that  
16 second page that has Cynthia Clousson at the top.

17 A Yes.

18 Q So that shows what Cynthia's payout was  
19 for 2002, right?

20 A That's correct.

21 Q Okay. Now, this one is different than  
22 the one we just looked at in that it has a column where  
23 the amount of overtime the employee worked is  
24 reflected.

25 A That's correct.

1                   Q           As you look at Ms. Clousson's, for  
2                   example, is it right to assume that she made 1.2  
3                   percent -- I didn't say that right. 1.2 percent of her  
4                   compensation, I guess, as a percent of her base was  
5                   overtime pay, right?

6                   A           Yes.

7                   Q           Which isn't that much; is that fair?

8                   A           Yeah, it's a modest amount of overtime.  
9                   That's right.

10                  Q           She, it appears -- and if you look in  
11                  the column on the right where it says OT based  
12                  adjustment, it appears to reflect that she lost \$835  
13                  from her AIP bonus because of her overtime; is that  
14                  right?

15                  A           No. No. Let me explain how to read  
16                  this chart. And Cindy is perhaps a bad example, but  
17                  we'll use it as long as you picked it out.

18                               Cindy was -- had a -- you know, a  
19                  potential bonus of \$835, as noted in the portion payout  
20                  2001 column. Her overtime based adjustment is zero,  
21                  which means that we -- we made no adjustment related to  
22                  overtime to her available bonus, and so the amount  
23                  available for payout was \$835. The decision was made  
24                  to -- not to pay Cindy anything and -- and so --

25                  Q           For reasons having nothing to do with

1 overtime?

2 A Yes.

3 Q Based on her job performance?

4 A Yes.

5 Q Let's turn to what's marked -- well,  
6 it's the quality department, which is several pages in.

7 A Okay. There's a page in the lower --  
8 page number in the lower right. You've got -- oh,  
9 shoot. No, never mind. They go over -- that's fine.

10 Q If you see the Bates stamp number on  
11 the far right --

12 A Yeah.

13 Q -- it's 3362.

14 A That's good. Okay.

15 Q Just so the record is clear, we're  
16 looking at Exhibit 37, a document made an exhibit at an  
17 earlier deposition. All right. Now, you see that this  
18 lists employees of the quality department, right?

19 A Yes.

20 Q Let's look at one of the plaintiffs in  
21 this action. Do you see Mr. Stegmann's name at the  
22 bottom?

23 A Yes.

24 Q As we look over and look at the numbers  
25 in the different columns there, is it fair to say that



1 his AIP bonus was reduced at least \$1325 because of the  
2 overtime he worked?

3 A That's correct.

4 Q How do you further explain how it was  
5 reduced from \$3092 to zero?

6 A Mr. Newark must have not been happy  
7 with his performance.

8 Q Looking right above Mr. Stegmann is Mr.  
9 Phelps. Do you see in the far right-hand column  
10 there's some handwriting --

11 A Oh, I'm sorry. I'm sorry. I misspoke.  
12 Not Newark, but quality would be Rick -- Rick Williams.

13 Q Okay. Right above where Mr. Stegmann's  
14 zero is on the right-hand column, if you look up to Mr.  
15 Phelps --

16 A Yes.

17 Q -- there's a \$2000, then it says plus  
18 SAP and I can't read the rest.

19 A 2000.

20 Q Do you know what that refers to, that  
21 handwriting?

22 A Yes. In that year there were two  
23 projects that went very well that people worked as a  
24 team, and Dave Adams felt that they should be  
25 recognized monetarily within this system for -- for

1       having done well. And so this relates to -- the words  
2       SAP is the brand name of our software, and that was the  
3       year that a team of people went out and rolled out the  
4       SAP factory -- whatever they call it, the factory  
5       control module or whatever, the software that's used in  
6       managing the flow of -- of product through the plant  
7       and the roll-up of accounting and things of that sort.  
8       So it's really the manufacturing data system and it was  
9       implemented at -- during that year and it was felt that  
10      people in that group did, you know, a very good job and  
11      Dave wanted to recognize that. And so you'll see that  
12      notation throughout several different departments from  
13      accounting to quality to manufacturing.

14               Q       Turn back to Mr. Stegmann, let's  
15      compare him to Craig Stevens, which is several names  
16      up. Do you see Mr. Stevens' entry there?

17               A       Yes, sir.

18               Q       It says Mr. Stevens worked -- the  
19      percentage of his OT relative to base is 36.2 percent.  
20      Mr. Stegmann's was 36.6 percent. Mr. Stegmann, his AIP  
21      bonus was reduced by \$1325. Mr. Stevens' was reduced  
22      \$701. Are those differences the reflection of their  
23      total base pay or was a determination made that even  
24      though their overtime rates are roughly the same, that  
25      Mr. Stevens was not reduced as much as Mr. Stegmann?

1           A           The calculation that was followed in --  
2           in most of the organization other than Mr. Newark's was  
3           there was a table that Mr. Bugajski calculated and so  
4           depending on the overtime as a percentage of base, then  
5           a certain percentage of your -- the proportion payout  
6           was -- you know, was reduced by a certain proportion.  
7           So seeing as how that then is a function of pay, it's  
8           pay related in this case.

9           Q           All right. So the relationship between  
10          overtime and AIP bonus for that year, there was a  
11          strict formula that was used. If your percentage of  
12          overtime relative to base was at a certain level, it  
13          was reduced accordingly based on the formula?

14          A           That reduction that you see in the  
15          overtime-based adjustment is -- is correct, except for  
16          in Mr. Newark's area of responsibility. In his area of  
17          responsibility -- as this process was being unfolded,  
18          the -- or the process went kind of like this: A group  
19          of people, and, you know, I can recall there was, you  
20          know, Len Sennish and Mark Bugajski, myself, there had  
21          been a lot of discussion about, you know, Dave Adams'  
22          and other people's concerns about the overtime and, you  
23          know, Dick Newark had heard that there was a lot of  
24          concerns about it, that it was to affect the AIP, and  
25          yet he wasn't at the particular meetings that we were

1 beginning to discuss this and so the decision was made  
2 that, okay, Herb, you're going to get to Dick Newark,  
3 you know, his people laid out in terms of, okay, well,  
4 how much overtime they made and that sort of thing and  
5 see how he reacts to it and see how he comes up with a  
6 way of dealing with this, given some general guidelines  
7 from Mark Bugajski about, okay, we're so much over so,  
8 you know, the answer ought to come out in general about  
9 here. Now, I don't -- you know, obviously that's  
10 pretty technical. I'd have to look at the notes to see  
11 exactly how that worked, but basically that's what  
12 happened.

13 So Dick went and -- you know, so he  
14 didn't have -- well, I guess, I don't think he had this  
15 thing with the OT-based adjustment in there yet. He  
16 had an earlier spreadsheet without that column in  
17 there. And he went through and made some adjustments  
18 in pay based on the amount of overtime that people had  
19 been -- or adjustments in the AIP.

20 And then -- and then he gave them back  
21 to me and then I -- what I did was I -- you know, he  
22 had them in -- I don't know whether he had them color-  
23 coded or what, but I remember having to, you know,  
24 translate that into spreadsheet-readable format. And I  
25 did that and then I fed that back to -- it seems to me

1       that Karl Kehr at that point in time was on a trip and  
2       so -- Karl might have been back at that time, but I  
3       know that he wasn't at one of the earlier meetings when  
4       we were talking about, okay, the impact of overtime. I  
5       remember having to kind of fill him in about what had  
6       gone on. But anyway, then I fed back to people, you  
7       know, Mark and Len and probably Karl, okay, this is how  
8       Dick's spreadsheet comes out.

9                       And the answer was is that by his own  
10       devices Dick had come up with a result that in  
11       aggregate was very similar to what Mark had done by  
12       formula and was -- the amount of reduction was a few  
13       thousand dollars -- the amount of reduction was a few  
14       thousand dollars more than Mark Bugajski had said, you  
15       know, that was kind of his -- his thought about, okay,  
16       this is where we need to get approximately. And so the  
17       decision was made then to let Dick's assessment stand  
18       because the result was fairly similar to what the other  
19       individuals came out by formula in that there were some  
20       people who, despite a huge amount of overtime, Dick did  
21       award them some bonus and there were some people who  
22       may not have had much overtime that, you know, in  
23       effect, didn't get bonus because of performance  
24       reasons. And so there -- the overall outcome seemed to  
25       be similar to what some of the other managers had done.

1                   The directors did not use completely  
2           uniform methods in arriving at -- at their process.  
3           Some of them strictly come up with the numbers  
4           themselves, other ones involve their direct reports in  
5           coming up with the numbers.

6                   Q           So everyone except for Dick Newark,  
7           people who worked under Dick Newark, were their bonuses  
8           determined -- the amount of overtime reduction they had  
9           for 2001, was that based on a formula?

10                  A           Yes.

11                  Q           It didn't matter if the person was a  
12           good guy who worked a lot of overtime or not; that was  
13           based on a formula?

14                  A           Well, let's clarify this by talking  
15           about what -- how this chart works because I think that  
16           will help you understand.

17                               The -- the third from the end column is  
18           the overtime-based adjustment, and so you have that  
19           number. And then you go to the next one and that's the  
20           available, which is the proportion payout minus the  
21           overtime adjustment comes to the amount of available.  
22           All right. In that column then is the amount available  
23           and you'll see -- just happen to come up on people that  
24           -- if you look at Brian Connolly, this shows a \$1518  
25           overtime adjustment, comes to an available payout of

1       \$1518, but Brian was actually awarded \$2000 because  
2       evidently in their evaluation he was a good performer  
3       and they felt that they ought to give him a little  
4       more.

5                       So does that help you understand that  
6       process? Am I going too fast?

7               Q       No, no, no. I understand. If it  
8       hadn't been for the overtime reduction, he would have  
9       received \$3036?

10              A       Yes. And based on this, he probably  
11       would have gotten a little more than that if Rick had  
12       the -- you know, if that worked out in aggregate.

13              Q       But you started to say something else  
14       with Dick Newark. You said other directors did their  
15       own thing. Other directors besides Dick Newark  
16       followed the formula regarding the OT reduction?

17              A       That's correct.

18              Q       Okay. I think we're done with 2001.  
19       Let's just look at 2002 briefly, which is Exhibit 142.

20              A       Yes, sir.

21              Q       2002's AIP, there is no column for  
22       overtime reduction, right?

23              A       That's correct.

24              Q       That wasn't followed for that year?

25              A       That's correct. In a preliminary

1 meeting, I don't remember exactly who, probably Len  
2 Sennish and Karl Kehr and myself, in setting this up, I  
3 raised the question, I said well, where are we on  
4 overtime? Are we going to be doing that again or not?  
5 And my recollection was that it was Karl that said that  
6 people had been managing overtime in a better manner in  
7 that year and he didn't feel it was necessary.

8 Q Now, the directors who manage  
9 departments where there was a lot of overtime, were  
10 they reduced? Excuse me, was their AIP reduced for AIP  
11 2001?

12 A It depends on what level in the  
13 organization. And, again, we're referring back to the  
14 other exhibit, which I'm digging out. But you have  
15 varying levels of management, so you have a -- you may  
16 have a business manager, let's say, in production who  
17 has several group leaders working to him -- working for  
18 him and then, you know, above him is going to be the  
19 director of the department and so there are people at  
20 varying levels. And so the -- the people at the -- I  
21 guess if you go through and look at this, you will see  
22 that through a certain level, and what's the sort order  
23 on this? Okay, this one here is by department sort  
24 order. But the MR level employees are all on this  
25 sheet and so if they were eligible to receive overtime,



1 and some of them were, some of them weren't, or  
2 received it, then they were included within this --  
3 this concept.

4 On the other hand, going up, the  
5 evaluation schema was different, in that there are two  
6 other groups of people. There's the -- I'll do it in  
7 high to low order. There's the TMT members, the  
8 directors, and then there are the SCR level employees  
9 who are not TMT directors, and the -- in 2002 there's a  
10 sheet in here about what the directors got, and you'll  
11 see that at the director level -- well, maybe that  
12 isn't as part of this, but it seems to me that, if I  
13 remember -- I'm looking for a particular form and it's  
14 usually sideways, so hang on just a second. No, this  
15 exhibit doesn't have it, but I suspect we produced  
16 somehow the -- but the -- the rule is is that the  
17 officers and the direct reports, which we would  
18 consider the TMT members, have to have their bonus  
19 approved by the -- by the board of directors. And that  
20 amount relates to -- they have -- they have a different  
21 -- a little bit more direct. Instead of having a band  
22 modifier, basically they have a -- a maximum that's  
23 individual based upon, you know, the scope of their  
24 job. And so then the -- then the percentage is applied  
25 to that, you know, the payout percentage is applied

1 directly to that -- to that maximum.

2 And so -- so to answer your question,  
3 the TMT director that might have had an excessive  
4 amount of overtime in -- in that year of payout of  
5 2000/2001, I'd have to take a look at that to see if  
6 there was any variation. Do you have those figures  
7 there?

8 Q I have something for you. This is  
9 Exhibit 143.

10 A Oh, okay. This is 2001, okay. And so  
11 you can see that if you look at -- let's go down to  
12 Bugajski, Newark, Sennish, people like that, that the  
13 -- the officers have a completely different scheme in  
14 terms of how the math is done, so, you know, we can  
15 skip over that. But looking at the -- at the senior  
16 managers, you can see that 61.72 percent was applied to  
17 whatever their maximum is and that generated an actual  
18 bonus. And so, as you can see, that I -- I don't  
19 believe in that year there was any variation from what  
20 the formula generated for those -- for those guys.

21 Then there is a second group of people  
22 who are the SCR level employees. These are senior  
23 managers but not TMT members, okay? And not all but a  
24 decent chunk of those guys are Ford transitionals. And  
25 -- and their individual performance was considered in

1 the determination of their bonus and I really, without  
2 looking at the list, couldn't tell you whether -- in  
3 fact, even looking at the list I can't tell you whether  
4 overtime was a factor because it wasn't a direct -- a  
5 direct relationship. It would have reflected more on  
6 their overall performance.

7 Q I think you said for Exhibit 143 -- I  
8 don't know if you were referring to the officers or  
9 just the people listed as other senior management, but  
10 was it your testimony that all of the people listed on  
11 Exhibit 143, their bonuses were strictly according to a  
12 formula, there was no variance based on individual  
13 performance; is that right?

14 A The answer to that is yes.

15 Q And the answer was that there wasn't a  
16 variance; that's correct?

17 A Okay. Let me restate that. Yeah.  
18 What you said was is that everybody was paid according  
19 to formula and there wasn't a variance related to  
20 performance or overtime. And the answer was yes.

21 Q And the formula, did the formula factor  
22 in excessive amounts of overtime in certain  
23 departments?

24 A Well, this -- the -- and, again, I made  
25 the distinction that the -- the officer one is a

1 completely different -- well, it's -- it's quite a bit  
2 different than the -- the senior managers.

3 Q Well, the question was: For either  
4 group, the officers or the senior management, would the  
5 amount of overtime worked by salaried personnel, would  
6 that be factored into the formula that you've referred  
7 to for either group?

8 A Not directly. Only in the sense that  
9 the -- I forget which exhibit it is here, is that  
10 exhibit -- this exhibit that -- here, I'll find it.  
11 Exhibit 140 governs everything, okay? I mean,  
12 everybody that gets AIP, officers, SCR, everybody, this  
13 is the root. And to the extent that our productivity  
14 was at the 25 percent level and that our cost per unit  
15 was at the 50 percent level and that productivity and  
16 cost per unit are very closely intertwined, it affected  
17 everybody. But there was no direct adjustment,  
18 compared to many of the other employees.

19 Q Exhibit 142, just very briefly, this  
20 report which we started to talk about, it has AIP  
21 percent payout per chart and we see a bunch of  
22 percentages there, starting with Mr. Kendall at the top  
23 who has 9.2 percent --

24 A Yeah. Mm-hmm.

25 Q -- again, those percentages relate to

1 the pay band designation as well as if the person is ZF  
2 Batavia new hire or Ford transitional?

3 A That's correct.

4 Q And that also was true of Exhibit 37,  
5 which was 2001? It's true of all the reports, that  
6 there is a grade code and then there is an AIP percent  
7 payout?

8 A That's correct. That's correct.

9 Q That's true of all the reports we've  
10 just looked at?

11 A Yes.

12 Q Okay. You can put those aside. I  
13 think we're done with those.

14 A Okay.

15 Q Are you aware that the Ford  
16 transitional employees, the salaried employees,  
17 received a transition bonus paid out over the course of  
18 several years?

19 A Yes, sir.

20 Q And do you know on what basis the  
21 transition bonus was awarded for those employees and  
22 for what reason?

23 A Well, only in a general sense because I  
24 wasn't there, you know. But I think it was to help  
25 make up for the fact that they may not have certain

1 things in their reward system that -- you know, with ZF  
2 Batavia that they had with Ford. But --

3 Q Anything specific?

4 A No. No. I mean, you know --

5 Q Who --

6 A Go ahead.

7 Q I'm sorry. You said you weren't there  
8 in '99, which is true. Who told you that was the  
9 reason for the transition bonus?

10 A Well, I would imagine it would have  
11 come up with my orientation with Tony Deshaw because  
12 one of the things that Tony passed over was that hey,  
13 you know, don't forget to pay them the money every  
14 year, what they're due, and, you know, here's the list  
15 and all that sort of thing. So he gave me a general --  
16 general idea. But --

17 Q Did he tell you that it was due to, in  
18 part, the loss of the A plan?

19 A Well, I can just remember, you know,  
20 just him giving me a general, you know, over -- you  
21 know, thing that there were differences in the -- you  
22 know, in the system and -- and there were a couple of  
23 things that were done to try and help make up for the  
24 fact that there was a difference in the two different  
25 pay and benefit systems. So, you know, I remember we

1       talked about this Ford transition bonus, which is a  
2       very finite period of time, three -- you know, three  
3       installments, as opposed to the defined contribution  
4       piece of the 401(k), which is an ongoing kind of  
5       payment which actually goes up every year.

6               Q       You heard in some testimony perhaps at  
7       Mr. Sennish's deposition about an employee named Bernie  
8       Blankenship.

9               A       Yeah. Mm-hmm.

10              Q       And Mr. Blankenship apparently had gone  
11      to HR and said that he was denied some overtime.

12              A       Mm-hmm.

13              Q       Were you involved in that?

14              A       Only very peripherally. You know,  
15      Bernie pretty well took his concern directly to Len. I  
16      mean, Bernie is a very friendly, talkative guy so, you  
17      know, I may have had a conversation with him about it  
18      and heard from Len afterwards what happened, but I  
19      don't -- I don't remember being involved as it was  
20      going on.

21              Q       You were also here during Mr. Saleh's  
22      testimony, right?

23              A       Mm-hmm.

24              Q       He had testified about documents he had  
25      seen that had reflected whether -- a document he had

1 had from human resources that showed that for Ford  
2 transitional employees the AIP bonus or perhaps the  
3 merit increase should be different based on the fact  
4 they were Ford transitional. Are you aware of any such  
5 documents?

6 A The -- I'm aware of the testimony that  
7 Hassan, you know, made, and then there was a subsequent  
8 request in the discovery for those documents. And so  
9 in trying to determine, you know, what's there, the  
10 conclusion that I came up with was is that in AIP there  
11 are plenty of documents that indicate that there is a  
12 difference for Ford transitionals and -- and ZF new  
13 hires and I think we've covered that ground pretty  
14 thoroughly.

15 With respect to merit, I was unaware of  
16 any and so I went to Hassan and I said "Hassan, they're  
17 asking for this document. You testified about it. You  
18 know, explain it to me."

19 MR. HUNTER: Hang on. We're getting  
20 into work that was done at my request.

21 THE WITNESS: Oh, okay.

22 MR. HUNTER: To help move things along  
23 here, I'm willing to waive privilege on a  
24 limited basis, that he can answer this  
25 question, but it's not an overall waiver of



1 privilege, Mr. Simon. If we can move forward  
2 with that understanding, I think I'll let Mr.  
3 Huebner finish the question.

4 MR. SIMON: You can finish the  
5 question.

6 THE WITNESS: Okay. So I asked Hassan,  
7 you know, what were you thinking of when you  
8 made that testimony, and Hassan told me that he  
9 was thinking about AIP and not merit and that  
10 was his answer and so he was not able to come  
11 up with a document and, you know, neither was I  
12 because the -- you know, my understanding of --  
13 and obviously I'm in the middle of it, is that  
14 the merit system, you know, is not presented  
15 with a distinction between Ford transitionals  
16 and -- and new hires.

17 BY MR. SIMON:

18 Q Are you aware of any plan or intent to  
19 have the Ford transitional employees have their  
20 salaries in line with the ZF Batavia new hires?

21 A A couple of things. I know that -- and  
22 I think we've provided this in discovery, but what I've  
23 run across in the early planning, that there was  
24 discussion of, okay, you've got this group of people  
25 from Ford and you're going to hire a bunch of people

1 coming in. How are you going to handle it? And there  
2 was discussion, you know, at the very early stages of  
3 the formation. So I'm aware of that.

4 Then when I came here as an HR  
5 professional, I come in and say, oh, this is very  
6 complicated and so I suspect I talked about it with  
7 Tony and I -- but I very clearly talked about it with  
8 Karl. And I said "Well, gee, Karl, you know, pretty  
9 complicated. Has this got some sort of a phase-in or a  
10 sunset or something like that, that you've got these  
11 separate systems?" And he said no, that, you know, his  
12 intent was is that we would continue to have a higher  
13 pay range for the Ford transitionals than the -- than  
14 the ZF new hires and that we would have those -- you  
15 know, those two systems because then the Ford  
16 transitionals, as any -- you know, as a whole had more  
17 room, you know, within their salary range. And we've  
18 kept that up.

19 Q All right. We won't make these  
20 exhibits. I don't have a copy for Mr. VanWay to even  
21 see from there, but I'll just describe it. This is  
22 document 5419, and actually let me give you --

23 MR. VANWAY: Oh, that's all I needed,  
24 Steve.

25 MR. SIMON: You've got it, right?

1 MR. HUNTER: Just for clarity, these  
2 are not going to be made exhibits?

3 MR. SIMON: I don't believe so. I have  
4 an extra 5419. I actually need 5420 back,  
5 John, if I could take yours back. There we go.  
6 Broke from tradition here. No, we're not going  
7 to make them exhibits.

8 BY MR. SIMON:

9 Q This e-mail and this portion of  
10 something from June 2002, some sort of policy committee  
11 meeting, references FMLA review. And without  
12 disclosing any attorney/client communications, as Mr.  
13 Hunter's name is referenced, I'm wondering what sort of  
14 FMLA review there was at that time.

15 MR. HUNTER: Steve, it's the Fair Labor  
16 Standards, not --

17 MR. SIMON: I'm sorry. Pardon me.

18 MR. HUNTER: Okay.

19 BY MR. SIMON:

20 Q One says FLSA and the other has FMLA.  
21 I think -- let's do it this way. The same with 5419,  
22 Mr. Huebner. Do you see where it references at the  
23 bottom of that e-mail -- this is from you to Mr.  
24 Sennish, right, on June 2nd?

25 A Yes.

1                   Q           "John has not gotten back to me on  
2 overtime policy."

3                   A           Mm-hmm.

4                   Q           And then we look over at 5420 and it  
5 says "Awaiting Fair Labor Standards Act review by John  
6 Hunter, Jr."

7                   A           Mm-hmm.

8                   Q           Again, without disclosing any  
9 attorney/client communication, was there some  
10 communication you were having amongst the policy  
11 committee about the Fair Labor Standards Act?

12                  A           Well, basically if you look under the  
13 -- this document here, the overhead, we were talking  
14 about the excused absence policy, and the excused  
15 absence policy is the one that talks about the  
16 sick/personal time, all right, the three and the five-  
17 day thing. All right? And so we were working on -- we  
18 had already made the announcement to employees that we  
19 were going to go back to five days and I had been busy,  
20 so we didn't actually get to change the -- the wording  
21 of the policy for, you know, some time afterwards and  
22 so this is -- this is the discussion that we had about  
23 making that change back in 2002 on the -- on the  
24 actual, you know, policy form. And so the Fair Labor  
25 Standards Act part of it was just something that we

1       felt we had to have looked at because we were, you  
2       know, getting involved in, you know, making sure that  
3       -- you know, whatever the rules were and everything  
4       like that were okay, so we had John review them.

5                       But I don't know that there was a whole  
6       lot of discussion at the policy level about -- about  
7       the Act itself.

8               Q       Okay. We're done with those two.  
9       Again, we won't make this an exhibit. We'll try to  
10      make this less confusing. You can share this with Mr.  
11      Hunter. This is 5436 and 5437. Those are Bates  
12      stamped by ZF Batavia, two documents that are  
13      handwritten notes. It says "Policy Committee Agenda  
14      Topics." Are those your handwritten notes?

15             A       It's not my handwriting, no.

16             Q       This refers to a committee meeting on  
17      it looks like November 1st, 2001.

18             A       That's correct.

19             Q       And you would have attended unless you  
20      were ill or something else, right?

21             A       That's correct.

22             Q       Turning to the second page of that, in  
23      the middle it says "Vacation/Buy or Sell," do you see  
24      that?

25             A       Right.

1                   Q           "Do we limit to four or five weeks," do  
2           you see that?

3                   A           Mm-hmm.

4                   Q           What's the current policy regarding  
5           buying or selling vacation for an employee that has,  
6           let's say for example, four weeks of vacation?

7                   A           Okay. Basically the rule is is that  
8           the vacation buy or sell, a person can't buy more  
9           vacation such that the total vacation of company and  
10          purchased would exceed four weeks. And the thinking  
11          behind that was is that this is a period of (A) again,  
12          high customer demand and CVT launch, and so it was felt  
13          that we had to have people on board working. And, you  
14          know, with 18 paid holidays in some years -- that  
15          varies by the calendar, but people do have quite a --  
16          quite a bit of time off.

17                  Q           So was the discussion at the time -- in  
18          2001 was it the case that it had -- because it says "Do  
19          we limit to four or five weeks," what I'm wondering is:  
20          Was it limited to four weeks at that time, five weeks  
21          at that time? Was there a change in policy?

22                  A           Let me think this through. My  
23          recollection is is that the limitation of four weeks  
24          was done on -- you know, effective for 2002 and it was  
25          decided again that 2003 the same rule would apply.

1                   Q           So from 2001 to 2002 it went from five  
2 weeks of vacation you could buy or sell to four weeks?

3                   A           Oh, no, no, no, no, no. No.

4                   Q           There are some employees who have five  
5 weeks of vacation?

6                   A           That's correct. Let me just give you a  
7 real quick rundown. There are some employees that have  
8 five weeks of vacation. Those are limited to Ford  
9 transition employees who were at that point when they  
10 made the transition eligible for five weeks. Okay?  
11 Then there are other employees who have from, you know,  
12 entry people up to four weeks of vacation.

13                               And, again, like I say, the rule is  
14 that was implemented in -- and my recollection is  
15 1/1/02 and again done for 2003 is is that you can --  
16 the general rule about buying or selling is that you  
17 can only buy or sell one week, okay, and, two, that if  
18 the sum of the company vacation that you would have  
19 according to policy, if you take that and if you wanted  
20 to purchase another week, if you add those two  
21 together, that sum can't equal -- can't exceed four  
22 weeks.

23                               So, for example, to turn it another  
24 way, if you have three weeks of vacation, you can buy  
25 another week. If you have four weeks of vacation or

1 five weeks of vacation, you can't buy another week.

2 Q And the buying and selling, has that  
3 policy ever changed since you've been there?

4 A Yes. 1/1/02. I --

5 Q That's what you were saying. Okay.

6 A Yes.

7 Q I understand.

8 A Yeah. Because previous to that you  
9 could -- if you had five weeks, you could buy a sixth  
10 and if you had four weeks, you could buy a fifth. And  
11 the difficulty with that, you know, was that line  
12 managers were calling me up and, you know, saying, you  
13 know, do we really want to do this because I'm having  
14 trouble figuring out how I'm going to get the work in  
15 my department done.

16 Q Okay. Again, that will not be an  
17 exhibit. Then there's a large stack I need to show you  
18 here but very few questions about it.

19 A Okay.

20 Q This is the summary plan description  
21 that I was given of ZF Batavia's investment plan.  
22 There's a date noted at the bottom. If you could share  
23 that.

24 A Okay.

25 Q 10/16/01, do you see that date at the



1 bottom there?

2 A Yes, sir.

3 Q Is that when this became effective?

4 And perhaps there were some changes before.

5 A Yeah. The effective date -- you know,  
6 this is probably the date that it was printed or  
7 something like that. I'm sure the effective -- you  
8 know, this is -- the effective date of any changes or  
9 anything are typically stated within the body of the --  
10 of the document.

11 Q Turning to page five of the document,  
12 which is Bates stamped 5349, at the top it says (A)  
13 Compensation, and it lists -- it says "In addition,  
14 compensation excludes..." and it says "...overtime pay,  
15 bonuses, et cetera," right?

16 A Mm-hmm.

17 Q And then addendum B, it says effective  
18 January 1st, 2000 and it goes on to say in paragraph  
19 sub-two -- are you with me?

20 A Mm-hmm.

21 Q "For purposes of matching  
22 contributions, compensation shall mean regular  
23 earnings, medical reimbursement, all overtime pay,  
24 shift differential and car allowance."

25 A Right.

1                   Q           I think we had some testimony about  
2           this from Mr. Sennish. If someone -- is it true what  
3           it says there in addendum B, paragraph A, sub-two, that  
4           if your overtime -- you've got \$20,000 worth of  
5           overtime, that's added to your total compensation and  
6           the matching contribution by the company is figured  
7           accordingly?

8                   A           Okay. This is a time-sensitive  
9           question that you're asking, so I will respond to you  
10          by which year we're talking about. It's somewhat  
11          complicated.

12                               In -- within about -- well, shortly  
13          after I was hired, I noted that there was a difference  
14          between what the plan document said in terms of  
15          eligible compensation on the 401(k) plan and the actual  
16          practice. This caused us to do some auditing and  
17          eventually a filing with the federal government for a  
18          voluntary correction.

19                               What was done then is that for 1999 the  
20          voluntary correction is is that we're doing what the  
21          plan document says, and that is basically on most forms  
22          of compensation, with a very limited number of  
23          exclusions -- car allowance and medical reimbursement,  
24          I think -- all compensation, you know, is considered  
25          eligible for 401(k). That's for the year 1999.

1                   For the year 2000 the amendment was  
2       made in the appropriate time frame such that we were  
3       able to make the definition of compensation roughly  
4       equate to the method that was used in -- in the  
5       operations of the payroll system, and therefore, for  
6       certain categories of the 401(k) we defined it as a  
7       certain amount and based upon what was actually done on  
8       the payroll because -- how's the easiest way to explain  
9       it? The setup of the payroll system, it's a third-  
10      party situation. We don't have all of the computer  
11      hardware and software resident. It's -- it's a  
12      purchased system. And the payroll person is in control  
13      of most of those automatic features of the plan but not  
14      all of them. For certain things you have to go to the  
15      vendor, ADP, and say I want you to change this or make  
16      this rule. Okay? So that for the year 2000 there were  
17      some situations where with some people for a given  
18      category of employer contribution or employee  
19      contribution, overtime might have been handled in one  
20      of two different ways. So the result was is that we  
21      tried to define the 401(k) plan as best we could to the  
22      method that had been used in payroll and then to the  
23      points where there was complete ambiguity we resolved  
24      it in the favor of the employee.

25                   All of this has been explained in

1       rather copious detail to the -- to the IRS in the  
2       voluntary compliance. Coincidentally the communication  
3       of the resolution of this is being communicated to the  
4       employees who were affected. In other words, those  
5       employees who were participants in 1999 and 2000 and  
6       there was some mistake made in their 401(k), that's  
7       being communicated to them by the end of the week. And  
8       we don't have the full approval of the IRS yet to make  
9       the correction, but we're far enough along that it's  
10      within the realm of acceptable practice to make the  
11      contribution.

12                   So -- you have a puzzled look on your  
13      face. It's a very complicated situation. To -- to go  
14      back, what I will say is is that for the year 2001 and  
15      beyond 401(k) eligible compensation for all categories  
16      is base pay. For the year 1999 for all categories  
17      except for Ford defined contribution, that's always  
18      been very well defined and, you know, Ford transition  
19      have this extra piece of 401(k) and that piece has  
20      always been very well defined in both the document and  
21      the payroll, so that's always been on base pay. But  
22      for 1999 everything besides that is -- is based on all  
23      compensation with the exception of car allowance, and  
24      that's very limited, and this medical allowance, which  
25      is a fairly minor amount of money.

1 Q What about 2000? Same thing?

2 A 2000 is listed in item B and if you  
3 want, I'll go through and read them to you, but you can  
4 read them yourself, too. But for the deferral  
5 contribution, which means the employee pre-tax  
6 contribution, that's regular earnings. For matching  
7 contribution compensation is regular earnings including  
8 adjustments, plus medical reimbursement, plus all  
9 overtime pay and adjustments, shift diff and car  
10 allowance. So that's for the match.

11 So if I put in, you know, six percent  
12 and, you know, the match is supposed to be three  
13 percent, unfortunately they're on different bases. And  
14 you think, well, that's not logical and from, you know,  
15 a high level view that isn't logical. But from the way  
16 the payroll is set up, they use -- they don't take your  
17 contribution and then, you know, figure out the match  
18 using a connected formula so a mistake -- they were  
19 done independent mathematical calculations, so a  
20 mistake was made on one and not the other.

21 And so rather than going back and  
22 trying to figure out what is rather complex mathematics  
23 when you get down to the details, we just said that  
24 we're going to define for this particular year as the  
25 way the payroll actually did it and so that's defined.

1 And this has been -- you know, we've run this through  
2 the IRS and we've got a letter of determination.

3 Then for the -- some of the other ones  
4 then there are some differences.

5 Q Right. Let me stop you, Mr. Huebner.  
6 I got what you -- '99 you explained that the  
7 contribution would be based on all compensation except  
8 for the minor things you've mentioned. For  
9 contributions made in 2000 we should follow addendum B  
10 here.

11 A Exactly.

12 Q 2001 and beyond, contributions are to  
13 be based --

14 A On regular pay.

15 Q -- on base pay.

16 A Base pay.

17 Q Okay.

18 A Good. Thank you. It's hard to  
19 explain.

20 Q That's all right. And we won't make  
21 that an exhibit. Let's see. There's been some  
22 documents that have been produced in this case since  
23 the last deposition that have reflected that Ford is  
24 reevaluating its overtime policy for salaried  
25 employees. Are you aware of this development?

1           A           Yes, I've heard that Ford is, in fact,  
2           doing that.

3           Q           All right. Is the fact that Ford is  
4           considering or has already made effective changes  
5           regarding salaried employees, the way they're paid  
6           overtime, does ZF Batavia have plans to do the same  
7           thing?

8           A           Not at -- well, let's put it this way:  
9           We're an independent company. We could make such  
10          adjustments if we chose. At this very moment I am not  
11          working on anything to change that, and on the other  
12          hand, it could change at some point in time. We'll  
13          just have to see.

14          Q           Has somebody told you -- again,  
15          excluding any attorney/client conversations, has anyone  
16          told you that "Mr. Huebner, Herb, this is something  
17          that we may look at in the very near future or in the  
18          future," words to that effect?

19          A           I had a conversation very recently with  
20          Karl Kehr and with Len Sennish, and you'll appreciate  
21          that in general this is a confidential kind of  
22          conversation. Mr. Kehr's view at this time is that we  
23          are in different circumstances for Ford, the parent,  
24          and that some of the work that we've done to manage  
25          overtime better in terms of scheduling and other things

1 has -- has been good and so at this time he doesn't  
2 feel an immediate need to -- to make those changes  
3 similar to Ford.

4 It was further discussed that given the  
5 climate in the industry, there's tremendous change,  
6 that this could change in the future and so I -- you  
7 know, what I took away from that is that at very high  
8 levels, probably at the board of directors's level, you  
9 know, this could be something that they would look at  
10 from time to time. But there is no interest at the  
11 precise moment to make any change.

12 Q Are there any other changes in the  
13 works or on the horizon that would affect my clients'  
14 employment at ZF Batavia?

15 A That's a pretty broad question. I  
16 mean, I think I've just said that the industry is in a  
17 tremendous state of flux and I don't think people can  
18 -- there's a lot of speculation on the floor. You  
19 know, you hear rumors of rumors. That's -- you know,  
20 when you sit in my office, you don't hear the real  
21 rumor. You hear a rumor of a rumor. But my advice to  
22 people has been to be calm and let -- you know, let the  
23 world, you know, move and then we'll see what happens.  
24 Because we are right now making 45 CVT transmissions a  
25 day. If those things sell like hot cakes, we're going



1 to be busier than the devil and rich as kings and if  
2 they fall on their fanny, we're going to have a  
3 problem, and I don't know of anybody that can predict  
4 what's going to happen. So I'm not in a policy-making  
5 -- you know, and quite honestly I don't get financial  
6 statements and that sort of thing, so I don't know at  
7 that level what's being contemplated.

8 But, you know, there's -- in terms of  
9 -- you know, I'm trying to think of like benefit  
10 changes or anything like that. I don't know what your  
11 question is. But, you know, things that would affect  
12 them is kind of broad. You know, do you have any  
13 suggestions for me?

14 Q Well, I mean, are there any major  
15 changes that are contemplated in the next, let's say,  
16 couple of weeks that might affect the terms of their  
17 employment or who's operating the facility, these sort  
18 of things?

19 A I have no knowledge of anything that's  
20 going to happen in the next couple of weeks.

21 Q Have you heard rumors of rumors that  
22 something is going to happen in the next couple of  
23 weeks?

24 MR. HUNTER: Objection to the extent  
25 that it calls for hearsay.

1 THE WITNESS: Yeah. And believe me,  
2 you know, we've said it's rumors, you know, but  
3 there's all kinds of rumors about things, that  
4 we could get -- you know, we could get bought  
5 out somehow. That's not unusual in the  
6 company, you know, we're at. So I don't know  
7 of anything -- I mean, that was told -- some of  
8 the most recent rumors I got from one of the  
9 plaintiffs, quite honestly, so --

10 BY MR. SIMON:

11 Q The rumors in the plant are that  
12 there's going to be some change in ownership; those are  
13 the rumors of the rumors that you're hearing? You're  
14 hearing those frequently at this moment?

15 A No. I'm not hearing any rumors  
16 frequently, but, again, that's where I sit. I mean, I  
17 don't -- you know, we're busy in our department and I  
18 don't have a lot of time to shoot the breeze.

19 Q Is it your testimony that there is a  
20 buzz going around the plant right now that there's  
21 going to be a change in the ownership of the plant?

22 A That's one of the things that's -- you  
23 know, that's going around, yeah.

24 Q And just to the extent that it would  
25 affect the terms and conditions of employment of my

1 clients --

2 A That's correct.

3 Q -- and then potentially affect claims  
4 in the lawsuit, are you aware of any prospective  
5 changes?

6 A No.

7 Q Even through hearsay?

8 A Am I aware of any change in ownership  
9 that's been determined or whatever from somebody in an  
10 official capacity? No. You know, have I heard rumors  
11 from, you know, just average employees that they think  
12 that something might be happening? Yes.

13 Q But as you understand, those rumors are  
14 not factually based at this point?

15 A I don't know whether they are or they  
16 aren't. I mean, you know, you've heard the story of  
17 the Ford transitional folks repeated, you know, time  
18 and time again, that when that sort of thing happens,  
19 almost everybody uses the same word, it's shock. You  
20 know, they maintain confidentiality and whatever  
21 happens happens and boom, everybody finds out at once.  
22 So we'll find out.

23 MR. SIMON: Let's take a break. Off  
24 the record.

25 (RECESS)

1 MR. SIMON: Back on the record.

2 BY MR. SIMON:

3 Q Mr. Huebner, you've testified for a  
4 while today. Is there anything that you said in your  
5 deposition up to this point that after further  
6 reflection, you realize you misspoke?

7 A Nothing comes to mind.

8 Q All right. And we had talked about Mr.  
9 Saleh's deposition and the discussion you and he had  
10 about merit increase and AIP, and basically your  
11 understanding, you said that he said that he misspoke  
12 when he was referring to merit and not AIP. You've  
13 attended the depositions of other defendant witnesses,  
14 Mr. Kehr, Mr. Newark, Mr. Sennish, Mr. Warden from  
15 Ford. Was anything said in those depositions where you  
16 thought "I know that's wrong. They made a mistake.  
17 That's factually incorrect"?

18 MR. HUNTER: I'm going to object. I  
19 mean, Mr. Kehr's deposition was I don't even  
20 remember how long ago. We've sat through 20  
21 depositions. That is really an unfair question  
22 to ask Mr. Huebner months later about that kind  
23 of testimony.

24 MR. SIMON: Sure. I'm not asking about  
25 any of the plaintiffs' depositions.

1 BY MR. SIMON:

2 Q But at any recent -- with Mr. Kehr, I  
3 know Mr. Kehr's was a while ago, earlier in time. In  
4 Mr. Newark's, Mr. Sennish's, Mr. Warden's, was anything  
5 said that you thought wow, he said that wrong and  
6 that's just not true? Did anything jump out at you?

7 A Nothing that jumps out at me. I'll  
8 tell you that that thought crossed my mind once or  
9 twice, but in terms of what it is, at the moment I  
10 can't think of it and it wasn't anything earth-shaking,  
11 you know. You know, just it stems from sometimes I'm  
12 the technical guy and some manager says something that  
13 might not have been, you know, fully technically  
14 accurate. But, you know, I don't --

15 Q Sure. I'll give you the chance to say  
16 nice things about people you work for. Mr. Sennish,  
17 he's your boss, right?

18 A Yes.

19 Q And you find him to generally be very  
20 knowledgeable about the personnel policies with respect  
21 to the salaried employees at the plant?

22 A Yes, sir.

23 Q And Mr. Newark isn't -- for example,  
24 he's not in HR, but you find him to be fairly  
25 knowledgeable with respect to salaried policies?

1           A           In general, yes. I mean, he's -- he is  
2           a line manager and so HR is not his -- you know, his  
3           immediate area of responsibility, so as a -- as a line  
4           manager, he's, you know, maybe not as technically  
5           strong as somebody that works in HR, but he's -- you  
6           know, he's been on the policy committee so he's, you  
7           know, had a chance to be involved in it.

8                       MR. SIMON: I have no more questions.

9                       THE WITNESS: Okay.

10                      MR. SIMON: Thank you.

- 0 -

(AND FURTHER THE DEPONENT SAITH NAUGHT)

- 0 -

---

Herbert Huebner

C-E-R-T-I-F-I-C-A-T-I-O-N

STATE OF OHIO,

COUNTY OF HAMILTON, To-wit;

I, Susan K. Lee, CVR-CM, Court Reporter and Notary Public in and for the State of Ohio, do hereby certify;

That on the 2nd day of October, 2003, there appeared before me pursuant to Notice and agreement of counsel, **HERBERT HUEBNER**, as a witness in the previously entitled cause;

That the said witness was sworn by me and examined to tell the truth, the whole truth, and nothing but the truth in said cause;

That the deposition was taken by me via Stenomask and electronic recording and the foregoing 126 pages contain a true, full and correct transcription of all the testimony of said witness;

That the deposition was submitted to counsel for the witness for reading and signature;

That I am not related to or in any way associated with any of the parties to said cause of action, or their counsel, and that I am not interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of October, 2003.

---

Susan K. Lee, CVR-CM  
My commission expires:  
August 30, 2004